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A History of Homestead Legislation

Ella S. Quam

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A HISTORY OF HOMESTEAD
LEGISLATION

6/2/36

A Thesis Submitted in Partial Fulfillment
of the Requirements for the
Degree of Master of Arts

by

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This thesis, submitted by Ella S. Quam, in partial fulfillment of the requirements for the Degree of Master of Arts is hereby approved by the Committee under whom the work has been done.

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~~CHAPTER I~~
GENERAL LAND LEGISLATION

The Homestead Law of 1862 was a distinctly American law, and not an adaptation from the land system of another country. It is not the work of any one legislator or of a single Congress but the result of a gradual change in our land policy over a period of three quarters of a century. That change was the result of considering the demands of sectional interests, industrial groups, and of realizing the increasing importance of the working classes after they were granted the franchise.) In order to understand the work of those leaders who were responsible for the homestead legislation, it is necessary to have in mind the exact meaning and extent of the public domain, and to summarize our earlier methods of disposing of the public lands.

The public domain embraces regions known as public lands owned by the United States and disposed of under the laws of, and by the authority of the national government. This would not include the total area of the nation, or national domain, as there were privately owned lands, grants by other governments, and reserves by the states ceding their land claims within our area.))¹

(Prior to the enactment of the homestead law the public

1. Thomas Donaldson, The Public Domain, p. 10.)

domain had been acquired in seven great grants, purchases, or cessions.) (The amount added each time is shown in the following table.²

Table I
TRACTS ADDED TO THE PUBLIC DOMAIN

Number	Region	Acres
I.	Cessions of land by the States	
	Massachusetts	34,560,000
	Connecticut	25,600,000
	New York (including part of claim of Massachusetts)	202,187
	Virginia	161,959,680
	South Carolina	3,136,000
	North Carolina (including Tennessee, all reserved)	29,184,000
	Georgia	56,689,920
	Total area ceded to the public domain	259,171,787
II.	The purchase of Louisiana from France in 1803	756,961,280
III.	The purchase of Florida from Spain in 1819	37,931,520
IV.	Area purchased from the state of Texas by the United States in 1850	61,892,480
V.	Oregon Territory obtained by treaty with Great Britain in 1846 (the greater portion of the cession)	183,386,240
VI.	Treaty of Guadalupe Hidalgo with Mex- ico in 1848. (the greater portion of this cession)	334,443,520
VII.	The Gadsden Purchase from Mexico in 1853 (the greater portion of the cession)	29,142,400

² Thomas Donaldson, *op. cit.*, pp. 11-13. The figures in the table are taken from this work except those for the Oregon Territory which are omitted. That item is taken from Benjamin Hibbard, A History of Public Land Policies, p. 7.

Included in this territory were many private land claims, that is, titles to land having their origin under the governments holding them before they became a part of our national domain. There were some in Northwest Territory, granted by the French and English military commanders before the Treaty of 1783. There were claims in Florida, Louisiana, and southwestern United States in grants made by France and Spain. These claims were protected in the treaties by which we obtained possession of the lands. In litigations resulting from doubtful claims our courts have maintained that change in sovereignty did not affect private property rights of individuals.³

These claims were not settled for many years after we obtained the lands. Congress established the Court of Private Land Claims in 1891 to pass on claims remaining in the Mexican lands acquired in 1848 and 1853. Up to 1904 there had been 33,440,482 acres of land included in confirmed private land claims, and the total amount was about 34,600,000.⁴ When a land grant was confirmed but not located, the claimant was given a scrip or written statement saying he was entitled to locate a certain amount of land. These were known as "private scrip claims" and their satisfaction was provided for by special acts of Congress.

A few features of the land policies can be traced to co-

3. Benjamin Hibbard, op. cit., pp. 23-25. He gives quotations from several decisions of the Supreme Court which clearly show the attitude.

4. Ibid., pp. 25-30.

lonial systems, of which there were two distinct ones in use. The New England system was known as "township planting." A region, perhaps six miles square, was surveyed, and platted into a certain number of equal tracts or squares, and then opened to settlement. One tract was allowed for each family making improvements thereon, one for the school, one for the church, and one for the ministry. This region became a church, school, and governmental unit. Such a plan made for compact settlements, and provided adequate defense against Indians. In the South land warrants were issued and the holder could locate his land wherever he chose to settle. This led to numerous overlapping claims and scattered settlements, for holders would try to locate on the best pieces. The surveys into townships six miles square, and the division of those squares into lots or sections also became customary at this time.⁵

Our national land policy began to take form under the Congress of the Confederation. In 1780 Congress was confronted by the demands of the soldiers of the Revolution who had been given land warrants, the need of revenue because of the lack of taxing power by Congress, the problem of defending the Northwest against Indian raids, westward immigration, the danger of losing the western states to Spain or England, and a need for a form of government for the western regions.)⁶ In that year an act was passed giving Congress the right to grant and sell

5. Benjamin Hibbard, op. cit., pp. 36-37, and P. J. Treat, "Origin of the National Land System Under the Confederation," Annual Reports of the American Historical Association for 1905, I, p. 239.

western lands for the common benefit of the United States, and to create states out of the territories. When the two hundred officers at Newburgh petitioned Congress for grants in Ohio which had been promised during the Revolution, a committee of five members under the chairmanship of Jefferson was appointed to prepare a land ordinance. The report of this committee, revised by another committee, was used in drafting the suggested Land Ordinance of 1784. This was revised before enacted into the Ordinance of 1785, which provided for the survey of the land into townships six miles square, the reservation of section 16 for schools, the sale at auction at a minimum price of one dollar per acre and cost of survey, the sale of half of the townships entire, and the other half in sections, the two sizes of tracts alternating, and that all the sales were to be conducted in the states. This contained most of the features of the New England plan.⁶ From this original act we have retained the method of survey, and the practice of setting aside a section for school purposes. The Ordinance of 1787 was made to provide for a plan of government for the region where tracts were purchased under this act. In that same year the original plan of 1785 which had provided for cash sales was modified so as to allow the purchaser to pay one-third at the time of purchase and the remainder in three months. Future sales were also to be held in the capital, New York, and not in the states,

6. Benjamin Hibbard, op. cit., pp. 38-39. P. J. Treat, op. cit., p. 238.

as formerly provided. Small amounts were sold, and much of that land sold was forfeited after the first payment had been made. New certificates for the amounts forfeited were later issued. Indian dangers, the unlawful settlement by squatters on the Ohio lands, slowness of surveys, and the sale of lands by the states themselves accounts for the small amounts sold.⁷

Meanwhile Congress secured some needed revenue for the Treasury from sales of large tracts to private companies. The Ohio Company bargained for 1,500,000 acres along the Ohio River. Mr. John Symmes and the state of Pennsylvania made other large purchases.⁸ In the end these sales produced little income for the distressed companies were relieved by new grants.⁹

Soon after the adoption of the Constitution, the problem of the public lands again arose. Squatters wanted the right of preemption and opportunity to buy small tracts. A committee was appointed to look into the advisability of establishing a land office near the land. On July 13, Thomas Scott of Pittsburgh, Pennsylvania, read the report of the committee on Western Territories to the House as a Committee of the Whole. His report showed the western point of view maintained in later years, and is worth noting for that reason. He continued to look upon the lands as a source for relieving

7. Benjamin Hibbard, op. cit., pp. 41-44.

8. Thomas Donaldson, op. cit., p. 17. To John Symmes 272,540 acres were sold or granted for army warrants realizing \$189,693 and in the same year of 1792 the sale of 892,900 acres were transferred to the Ohio Company for \$642,856.66, and 202,187 acres to the state of Pennsylvania for \$151,640.25.

9. Benjamin Hibbard, op. cit., pp. 43-45. P. J. Treat, op. cit., p. 238.

the public debts, pointing out that \$4,936,863 worth had been contracted for, which amounted to between 1/5 and 1/6 of the domestic debt, and said that western settlers had a right to look to Congress for protection, that opening the lands would not depopulate the East, that Spain was offering inducements to settlers, that improving a part would increase the value of the remainder, that the backwoodsmen would be hardy "husbandmen and warriors," and that Congress should not detain the destitute from earning a better living.¹⁰

No further action was taken till the request of H. W. Dobbyn, a foreigner, to purchase land was referred to a committee of which Mr. Scott of Pennsylvania was a member. Mr. Dobbyn wanted to buy a large tract, and be extended credit for two-thirds of the amount. Scott favored such contracts, but the majority of the House opposed. Because the public lands were important as a source of revenue, the Secretary of the Treasury, Alexander Hamilton, on January 20, 1790, was asked to submit a general plan for disposing of the public lands.¹¹ On July 20, 1790, Hamilton's plan was transmitted. He recommended methods of sale that would satisfy all three classes of purchasers, namely, moneyed individuals, associations, and small purchasers, and believed the main land office should be at the capital to satisfy the first two classes but that there should be one in the Northwest and one in the Southwest ter-

10. Annals of Congress, 1 Cong., 1 Sess., pp. 623-628.

11. Annals of Congress, 1 Cong., 2 Sess., pp. 1067 and 1072.

ritories to better accommodate the last class of purchasers. He suggested a General Land Office in charge of three commissioners, either ex officio or specially appointed, to have wide powers except as they were bound by certain regulations which he suggested, namely: sell only lands where Indian titles have been extinguished; reserve lands for those subscribing to public debt; set aside tracts of not over 100 lots a piece for actual settlers; set the price at thirty cents per acre, payable in gold, silver, or public securities; give no credit for tracts smaller than townships ten miles square, and then only for two years; where credit is given, one-fourth shall be paid at time of purchase, and security other than land itself shall be given; surveys should be at expense of purchasers and grantees; a surveyor general should be appointed who should have power to appoint deputies for the western governments. The report was practical and formed a basis for later methods of administering sales.¹²

The House, guided by this report agreed to resolutions favoring most of its provisions and a committee brought in a bill for establishing a land office, pursuant to those resolutions changing the price from thirty to twenty-five cents an acre. This bill was passed in the House, February 16, 1791, but was not acted on in the Senate.¹³

12. Thomas Donaldson, op. cit., pp. 198-200. The text of the report is found here.

13. Annals of Congress, 1 Cong., 3 Sess., pp. 1829-1842, 1866, and 1974.

Action was again taken on the establishment of a land office northwest of the Ohio in the early part of 1796. This bill reveals a difference between eastern and western points of view. Robert Rutherford, from a district on the Potomac in Virginia objected to sale in large plats because it would encourage speculation. The same opinion was expressed by William Findley from a district east of Pittsburgh in Pennsylvania, then a frontier region, by Christopher Greenup from Kentucky, and Van Allen of New York.¹⁴ On the other hand, John Nichols of eastern Virginia said large tracts were necessary to encourage moneyed men who would take whole regions and not merely select tracts of the best lands.¹⁵ Gallatin of Pittsburgh, Pennsylvania, believed sale of some large tracts was necessary to bring money into the Treasury, but small tracts should be offered the small farmers.¹⁶ Thomas Hartley of eastern Pennsylvania objected to survey into small plots on the ground of expense.¹⁷ Albert Gallatin again showed his western point of view in favoring a settlement requirement with confiscation for failure.¹⁸ As finally passed, the Act of 1796 provided for rectangular survey, the division of half of the townships into 640-acre tracts to be sold at local land offices, the sale of the other half in quarter townships at

14. Annals of Congress, 4 Cong., 1 Sess., pp. 328, 329, and 865.

15. Annals of Congress, 4 Cong., 1 Sess. p. 337.

16. Ibid., p. 862.

17. Ibid., p. 864.

18. Ibid., p. 411.

the seat of government, all at a minimum price of \$2, at public auction. One-twentieth was to be paid cash in thirty days and the balance in a year. Four sections were to be reserved. Government evidence of public debts should be received in payment.¹⁹ Few lands were sold and the expected revenue did not come to the Treasury. The law certainly needed revision.

On December 24, 1799, William Henry Harrison, then a delegate from Indiana, offered a resolution to appoint a committee to investigate the need of changes in the law for selling lands north of the Ohio. The resolution was agreed to and he was made chairman of the group of seven.²⁰ A bill reported on March 14th was considered in Committee of the Whole on March 31st, when Gallatin of Pennsylvania, Harrison of Indiana, Nichols of Virginia, and Gordon of New Hampshire, spoke in favor of survey into 320-acre tracts which they believed would prevent speculation.²¹ The bill, which became a law on May 10, 1800, favored the actual settler by locating four land offices in the Northwest Territory, providing for survey of part of

19. Annals of Congress, 4 Cong., 2 Sess., Appendix, pp. 2905-2909.

20. Annals of Congress, 6 Cong., 1 Sess., p. 209. The seven members of the committee were Harrison of Indiana, Bruce of Connecticut, Gordon of New Hampshire, Davis of Kentucky, Lyman of Massachusetts, Gallatin of Pennsylvania, and Gore. (Since there is no member by the last name in the Congressional directory I assumed it was a misprint in the Annals for Grove of North Carolina.)

21. Annals of Congress, 6 Cong., 1 Sess., pp. 625, 650.

the land into 320-acre tracts and part into 640-acre tracts. Provision was made for sales of three weeks duration, which had been advertised, and more liberal credit, one-twentieth to be paid at time of purchase, four-twentieths within forty days, and the remaining three-fourths in three years. Partly paid for forfeited lands should be sold, and if more than the cost of sale and the amount paid down was realized, the difference should go to the first purchaser.²²

During the second session of the Seventh Congress an act was passed for the disposal of lands south of the Tennessee River which was approved on March 3, 1803. It confirmed Spanish and British grants, and gave first right of purchase to actual settlers who were heads of families, and were living on and cultivating lands in the region at the time of passage of the act. After claims were cared for, section 16 was reserved for schools, and thirty-six sections were set aside for Jefferson College. The remainder was to be sold at public auctions on the same terms as northern lands.²³ This bill received a 58 to 12 vote in the House. Since it contained a concession to settlers or squatters, formerly treated as law-breakers, it is interesting to notice the nays were all cast by members from three states bordering the territory. Per-

22. Annals of Congress, 6 Cong., 1 Sess., Appendix, p. 1515.

23. Annals of Congress, 7 Cong., 2 Sess., Appendix, p. 1594.

haps they feared emigration.²⁴

Thomas Baude	Pennsylvania
Samuell Cabell	North Carolina
Andrew Gregg	Pennsylvania
William Grave	North Carolina
Joseph Heister	Pennsylvania
William Hage	Pennsylvania
David Holmes	Virginia
Michail Leih	Pennsylvania
John Randolph, Jr.	Virginia
John Smith	Virginia
Richard Stanford	North Carolina
John Taliaferro, Jr.	Virginia

Petitions were being received in Congress which made such demands as the sale of smaller tracts, no interest on purchase price until default, reduction of price, and small grants to actual settlers. Gallatin, then Secretary of the Treasury, was asked the effect of such changes, and the substitution of cash sales for credit. In his reply he said he favored small tracts of 160 and 320 acres reduced to \$1.25 and \$1.50 per acre, respectively, with no credit beyond forty days, but he was opposed to preemption laws for settlers who preceded the sales.²⁵

We find two of these concessions to settlers incorporated into the act to dispose of lands in Indiana, and "for other purposes" approved on March 26, 1804. Lands could be sold in quarter sections and no interest was to be charged on installments paid when due. This really reduced the cash price to \$1.64, since the eight per cent interest was discounted, not added.²⁶

²⁴. Annals of Congress, 7 Cong., 2 Sess., p. 611.

²⁵. Benjamin Hibbard, op. cit., pp. 72-74.

²⁶. Annals of Congress, 8 Cong., 1 Sess., Appendix, pp. 1285-1293.

All of the measures considered thus far had provided for selling lands on credit. The idea was prevalent that lands would sell faster, and more money would come into the Treasury. During the period of 1808 to 1820 the Embargo Act, the War of 1812, and failures of numerous unsound banks worked hardships on western farmers and forfeitures became common, while the debt due the government was \$21,000,000. Congress found it advisable to pass as many as twelve special or general relief laws providing for extension of time, the substantial discount of $37\frac{1}{2}$ per cent for prompt payment, remission of accrued interest, and application of the amount paid for purchase of a portion of the land.²⁷

Even westerners were beginning to lose faith in the credit system, and to realize a change must be made in the land laws. Petitions were coming in from western states and territories asking for extension of time.²⁸ On February 9, 1819, Jeremiah Morrow, chairman of the Committee on Public Lands, on which four of the five men represented western regions (Ohio, Mississippi, Indiana, and Louisiana) presented a report recommending no credit, reduced prices, and subdivision into smaller tracts. This report laid failures to pay to long credit inducements, tendency to anticipate favorable results, and unforeseen fluctuations in commerce. They believed a

27. Benjamin Hibbard, *op. cit.*, pp. 82-100.

28. Annals of Congress, 15 Cong., 2 Sess., pp. 100, 120.

cash system would benefit the West for purchasers could calculate their means, there would not be a continuous draining of money from the West for four or five years after purchase, and the industrious class would purchase small holdings. Smaller divisions would also prevent speculation. They believed small steady sales at low prices would promote sales and benefit the Treasury as well. In accordance with this report, a bill was submitted providing for sale in 80-acre tracts, at \$1.50 per acre with no credit.²⁹ In the debate on this bill the western Senators favored price reduction. On the rejected amendment of Edwards of Illinois to reduce the price to one dollar per acre, ten of the eleven yeas were from western states.³⁰ The bill passed the Senate but failed in the House for it was brought up as amended on March 3, 1819, at the close of the session.³¹

Petitions about the public lands continued to come to the next Congress. The Legislature of Illinois asked that the right of preemption be extended to certain settlers.³² The Legislature of Ohio petitioned for relief for purchasers.³³ Senator Johnson communicated a resolution from his state, Louisiana, favoring retention of the present system, asking that no change be made. The Legislature of Indiana petitioned for

29. Annals of Cong., 15 Cong., 2 Sess., pp. 215-217.

30. Ibid., p. 243.

31. Ibid., p. 1439.

32. Annals of Cong., 16 Cong., 1 Sess., p. 78.

33. Ibid., p. 275.

changes in terms of sale of public lands because of the injurious effect of present laws on western states.³⁴ Williams of Mississippi, the chairman of the committee on public lands in the Senate offered a bill similar to the one passed by the Senate of the previous Congress. Many amendments were offered and debated. Walker of Alabama offered one which would particularly benefit his constituents because much land in Alabama had sold for very high prices, some up to \$78 per acre. He proposed if a purchaser forfeited his certificate to the Register before the day of final payment, the land so reverting should be open for sale. If sold for more than the minimum price then set, the excess should be paid to the former certificate owner, provided the excess was not greater than the amount he had previously paid. Walker argued this would be fair to the earlier purchaser who had paid more than the amount specified by the new law. Senator King of Alabama opposed. The amendment was defeated by an 8 to 29 vote, which was sectional, showing eastern and western points of view, although a few opposed it because it was combined with the other bill. It showed a bond between West and parts of the new South.³⁵

34. Ibid., p. 360.

35. Annals of Congress, 16 Cong., 1 Sess., p. 482.

Table II
VOTE ON WALKER AMENDMENT

State	Aye Votes	Nay Votes
New Hampshire		2
Vermont		1
Massachusetts		2
Connecticut		2
Rhode Island		2
New Jersey		2
Maryland		0
Delaware		1
Virginia		1
North Carolina		2
South Carolina	1	1
Georgia		1
New York		2
Pennsylvania		1
Ohio		2
Kentucky	2	0
Tennessee		2
Alabama	2	0
Mississippi		2
Louisiana		2
Indiana	1	1
Illinois	2	0
Total	8	29

Ninian Edwards of Illinois, who was opposed to the cash system, offered an amendment to permit actual settlers upon quarter sections previously offered for sale and still unsold, to purchase in the same manner and on such terms as were then authorized by law. This was opposed by King of New York, and Otis of Massachusetts. Lowrie of Pennsylvania and Williams of Mississippi objected to having two systems. The vote on this amendment showed the support for credit again coming largely from the West.³⁶

³⁶. Annals of Congress, 16 Cong., 1 Sess., p. 458.

Table III
VOTE ON EDWARDS' AMENDMENT

State	Yea Votes	Nay Votes
New Hampshire		2
Vermont		2
Massachusetts		2
Connecticut		2
Rhode Island		2
New Jersey		2
Maryland	2	0
Delaware		2
Virginia		2
North Carolina	1	1
South Carolina	1	1
Georgia		2
New York		2
Pennsylvania		2
Ohio		2
Kentucky	1	0
Tennessee		2
Alabama	2	0
Mississippi		2
Louisiana	2	0
Indiana	1	1
Illinois	2	0
Total	12	31

Other amendments were offered by Westerners. Edwards would give the first right of purchase at private sale to pre-emptors. Noble of Indiana moved to strike out the part requiring cash payment, but wanted to retain the division into 80-acre tracts. Both propositions were defeated.³⁷ Johnson of Louisiana offered an amendment providing for a graduated scale of prices which was also defeated. The bill providing for cash sale at \$1.25 per acre in 80-acre tracts was passed by a vote

37. Annals of Congress, 16 Cong., 1 Sess., pp. 485-486.

of 31 to 7, which shows the older middle west (Ohio, Pennsylvania, New York, Tennessee, and Alabama) had learned credit sales did not favor the settler.³⁸

Table IV

SENATE VOTE ON BILL FOR CASH SALE

State	Yea Votes	Nay Votes
New Hampshire	2	
Vermont	2	
Massachusetts	2	
Connecticut	2	
Rhode Island	2	
New Jersey	2	
Maryland		
Delaware	1	
Virginia	1	
North Carolina	2	
South Carolina	1	1
Georgia	1	
New York	2	
Pennsylvania	2	
Ohio	2	
Kentucky		2
Tennessee	2	
Alabama	2	
Mississippi	2	
Louisiana		2
Indiana	1	1
Illinois		1
Total	31	7

When the bill was considered in the House, Robertson of Kentucky favored it, while his colleague, McLean, opposed it, saying it was a bill to help speculators. On the proposition to strike out the part which required full cash payment only 19 voted for the proposal. They were not representatives of

38. Annals of Congress, 16 Cong., 1 Sess., p. 489.

any one section for the votes were scattered, although it will be seen twelve were cast by western representatives.³⁹

<u>States</u>	<u>Yeas</u>
Connecticut	1
Virginia	4
South Carolina	1
New York	1
Alabama	1
Louisiana	1
Kentucky	4
Tennessee	4
Illinois	1
Indiana	1
Total	19

The bill was approved by the House by a vote of 133 yeas to 33 nays on April 20, 1820, thus ending the credit system.⁴⁰ The large vote shows the interest in the measure. Practically all of the negative votes were from the West and gulf section of the South. Ohio and Pennsylvania were unanimously in favor of cash payments. The vote on this measure will be found in Table I in the Appendix.

Sales fell off after the passage of the act. The payment of cash was a deterrent, and there was an inevitable reaction from the boom following the War of 1812.⁴¹

The practice of giving land bounties for military service began in the colonial period. It is necessary to take notice of this policy because it influenced the attitude toward homestead legislation. Military bounty grants were given

39. Ibid., p. 1896.

40. Annals of Congress, 16 Cong., 1 Sess., p. 1891.

41. Benjamin Hibbard, op. cit., p. 112.

both by the states and by national Congress during the Revolutionary War. Soldiers and non-commissioned officers, and later officers of the War of 1812 were granted land warrants which were not transferable. All soldiers of the Mexican War were granted land warrants, or if they preferred, a treasury scrip for \$100 receivable by the government in payment for land. In 1850 the government began to offer bounties to all men in every branch of the service in any war from 1790 through the Mexican War. On March 22, 1852, such warrants were made assignable so everyone could profit by his bounty warrant, even if he could not emigrate. In 1856 a new bounty act was passed so as to include any soldier or his heir, from the Revolutionary War on, who had served for a period longer than fourteen days. After the warrants became transferable, the easiest possible road to speculation was opened. The holders of warrants would sell at a very low figure. There were always buyers at some price, and at these low prices the land passed into private hands.⁴²

After the change had been made in 1820 to sell small tracts without credit, the next great alteration in the public land policy came with the preemption legislation. Preemption was the right to settle on and improve unappropriated public lands with the privilege of buying them at the minimum price with a limited term before they were offered for sale to any-

42. Benjamin Hibbard, op. cit., pp. 116-135.

one else. At first preemptors were looked upon as law breakers. Under the Confederation, Colonel Harmon was sent to drive them off lands in the Ohio region.⁴³ Petitions came to Congress asking preemption rights but no general action was taken till 1807, when an act was passed "to prevent settlement being made on lands ceded to the United States until authorized by law."⁴⁴ The President was authorized to remove such trespassers after January 1, 1808, and after they had been given three month's notice. They were subject to a fine of \$100 and imprisonment up to six months if they did not leave the land. The bill did not apply to persons in the Orleans or Louisiana territories.⁴⁵ In the debate on this measure considerable support came from the representatives of the South. They would not want small landholders going into the regions west. It would prevent the westward expansion of plantations after lands in the East wore out.⁴⁶

New England was almost solidly opposed to the measure, but another element entered into their vote. They contended the act was an invasion of states' rights, violated the Constitution, which provided that disputes concerning amounts over \$20 should be settled by a jury, and imposed excessive fines.⁴⁷

43. Ibid., p. 145.

44. Annals of Congress, 9 Cong., 2 Sess., p. 664.

45. Ibid., p. 1288.

46. Ibid., p. 667.

47. Annals of Congress, 9 Cong., 2 Sess., pp. 664-5.

The vote as given in Table II of the Appendix shows some opposition in Ohio and Kentucky where settlers were moving in.⁴⁸ The bill was approved by the President, March 3, 1807, and became law.

For the next twenty years sentiment in Congress continued to be opposed to the illegal settlers who petitioned for preemption privileges. The public lands were still looked upon as a source of revenue, and it was feared preemptors would advance ahead of the sales, and select the choicest lands which would then have to be sold for the minimum price. Trespassers were, however, leniently dealt with. The legislatures of Indiana, Louisiana, Alabama, and Arkansas passed resolutions favoring preemption laws. Petitions for free lands continued to come to Congress. In 1828 a favorable report was given to the House by the Public Lands Committee. All of this activity helped to bring results and in 1830 a preemption bill was introduced in the Senate.⁴⁹ The debate was sectional. Barton of Missouri, from the Public Lands Committee, in giving his reasons for reporting the bill stated the western attitude. He said it had been found necessary to make many departures from the bill of 1807, so it was desirable to have a new measure to prevent inequality. Speculators paid little above the

48. The membership list is taken from the Biographical Directory of American Congress 1774-1927, pp. 78-82. The vote is recorded in Annals of Congress, 9 Cong., 2 Sess., p. 672.

49. Benjamin Hibbard, op. cit., pp. 151-152.

minimum price so it was preferable to sell to settlers for that amount, as there would be very little loss to the treasury and a meritorious class would be helped. The earliest settlers endured privations and helped raise the value of the remaining land. He was supported by Hayne of South Carolina and Noble of Indiana. Bell of New Hampshire gave arguments against the bill which were typically eastern. He said it would encourage future violation of land laws by rewarding those who were now trespassers, and they would be able to purchase the choicest pieces at the minimum price. He said the effect was to give a year of credit.⁵⁰ The bill passed and gave the settler the right to preempt a quarter section occupied and cultivated the preceding year. He was not limited to surveyed lands. The act was to continue for only one year, but it was reenacted in 1834 and 1838.⁵¹ Thomas Benton supported, and Henry Clay opposed a general measure. Western legislatures and representatives continued to press the question.⁵² After having been a campaign question in the Election of 1840, a general preemption law was passed in September, 1841, with the right open to the head of a family, (men over twenty-one years of age, and widows), who were citizens of the United States or had declared their intentions of becoming such. Provided they did not previously have over 320 acres of land, they could

50. Annals of Congress, 21 Cong., 1 Sess., p. 8.

51. Benjamin Hibbard, op. cit., p. 153.

52. Ibid., pp. 152-156.

settle on 160 acres of surveyed land and later buy the same from the government without competition at the minimum price. The bill also provided for distribution of a large portion of the proceeds to the states. The vote is along party rather than sectional lines, the Whigs favoring and the Democrats opposing it. The House vote was 116 to 108, and also showed a party rather than a sectional division, most of the Democrats voted against it.⁵³ This would be expected for the Democrats wanted the proceeds from the sale of lands to go into the Federal Treasury. But the Whigs of the time, in the words of the editors of the Whig Almanac, "insist that these lands are the common property of all the States of the Union; that they were expressly so ceded by the few states in whom the title was vested at the close of the Revolution; and that the express condition was that their proceeds were to aid first in extinguishing the Revolutionary debt, and then to belong to the States--the Federal Union not having then been formed. That debt being now extinguished, the Whigs contend that the Land Proceeds should be fairly and equally distributed to the several States, to be by them applied to purposes of Education and Internal Improvement, so that they shall annually add to the enduring wealth of the country, and to the intellectual and physical advantages enjoyed by our People."⁵⁴

53. Benjamin Hibbard, op. cit., p. 157.

54. The Whig Almanac for 1843, p. 17.

Minor changes were made in the preemption law from time to time, the most important being those of 1853 and 1854 which provided for preemption of land previous to survey.⁵⁵ Other changes came after the passage of the homestead law passed in 1862.

After the thirties, there were three outstanding plans for changes in the public land policy kept prominently before the people. First there was Henry Clay's proposition to sell the lands in the West and distribute the greater part of the proceeds among all the states of the Union. A small portion was to go to the states in which the land lay. This plan was favored by the Whigs and the manufacturing East. The Whigs saw a way of financing internal improvements by the federal government and the manufacturing East saw a way of disposing of the income from lands now that the debt was paid. This would make a high tariff necessary to meet government expenses. Such a policy had been suggested since 1824 intermittently, but as aforesaid, Clay was the chief exponent and he introduced several measures till 1841, when the distribution project was included with the preemption act discussed above, and passed.⁵⁶ One bill had been passed in 1833, but it was vetoed by President Jackson. Within a year a deficit in the Treasury led to the suspension of the act of 1841, and although it was not repealed outright, it remained a dead letter.⁵⁷

55. Benjamin Hibbard, op. cit., p. 167.

56. Benjamin Hibbard, op. cit., p. 173.

57. Ibid., p. 197.

The second plan receiving considerable attention was the cession of the public lands to the states in which they lay. This had been requested by western states as early as 1826.⁵⁸ Hendricks of Indiana had offered the plan as an amendment to a graduation measure in 1827 and again in 1828. The plan was favorably mentioned in the Treasury report of December 7, 1831. Calhoun introduced a bill in 1837 providing for cession but included a provision that a portion of the receipts from the sales should go to the national government.⁵⁹ The bill was tabled in the Senate by a vote of 26 to 20. The twenty votes were from the South and West, and the twenty-six from the North Atlantic states, Virginia, North Carolina, Kentucky (1 vote), and Ohio (1 vote).⁶⁰ Calhoun tried again in 1840 and 1842 to offer his distribution plan as a substitute for other land measures, failing each time to get any but Southern and Western votes. It was defeated by Whigs and Eastern Democrats.⁶¹ "Although the proposal to cede the lands to the states failed as a whole, it succeeded in part. In 1844 the half-million acre grants were inaugurated, and continued for forty years."⁶²

Thirdly, there was the plan of Thomas Benton. He assumed that the lands in the West were to be sold. He advocated that

58. Raynor G. Wellington, The Political and Sectional Influence of the Public Lands 1828-1842, p. 59.

59. Ibid., p. 41.

60. Congress Debates, 24 Cong., 2 Sess., p. 794.

61. Raynor G. Wellington, op. cit., pp. 89-93.

62. Benjamin Hibbard, op. cit., p. 197.

the squatter who had anticipated the legal sale should be protected and have first opportunity to buy at the minimum price. He also believed that the length of time land had been offered for sale constituted a criteria for judging the quality of the land. Because of that belief, we find Benton repeatedly presenting plans for the graduation and reduction of the price of unsold lands. Benton's graduation bills were introduced in the Senate in 1824, again in 1826, and finally one came to a vote in 1828, when it was defeated by a vote of 25 to 21. The opposition came from the North Atlantic states and divided South.⁶³

The public land states, except Michigan, continued to petition Congress for graduation legislation. In 1832 the Committee on Public Lands submitted a report recommending a graduated scale in the price of public lands. The same committee again presented a favorable report in 1836, but little attention was paid to it because Clay and Crittenden in the Senate were championing distribution at that time. Graduation bills continued to come up almost annually. Three presidents, Jackson, Van Buren, and Polk, expressed favor for the measures. The same attitude was taken by commissioners of the general land office. Finally a bill passed the House in 1854 by a vote of 83 to 64, and in the Senate it passed without a division being

63. With the exception of one from Delaware all votes from North Atlantic group were against the bill. The West were all for it except Barton of Missouri. The South Atlantic section votes were divided, two for it and six against it. Annals of Congress, 20 Cong., 1 Sess., p. 678.

taken.⁶⁴

"The act as passed provided for a reduction in the price of land in proportion to the length of time it had been on sale without finding a purchaser. That which had been in the market ten years was to be sold at \$1.00; fifteen years, at \$.75; twenty years at \$.50; twenty-five years at \$.25; and thirty or more years at \$.12½."⁶⁵ This bill was an attempt to compromise between revenue and the demands of the settlers.

In all of the legislation reviewed thus far there was an increasing emphasis on the importance of the public lands as homes for the people and western development, and decreasing emphasis on the lands as a source of revenue. In 1832 Jackson advocated making limited quantities practically free to settlers. This idea began to take root and its adherents multiplied. The first stronghold was in New York where it became connected with anti-rent movement of 1839 led by Thomas Ainge Devye, who had emigrated from Ireland. In 1844 George Henry Evans began to publish in New York a tri-weekly journal called The People's Rights, and a weekly called the Workingman's Journal. In both of these he advocated free grants of land not to exceed 160 acres to actual settlers. The latter journal which was published only one year was the organ of the National Reform Association. This association published and distributed many pamphlets on

64. Congress Globe, 33 Cong., 1 Sess., pp. 918, 2204.

65. Benjamin Hibbard, op. cit., p. 300.

the land question which were scattered throughout the West. Horace Greeley was deeply interested in its work and the columns of the Tribune were open to the association. This group did not want reduced prices, but occupancy of one hundred sixty acres, by those who needed the land, with permission to permanently occupy one-fourth or one-half without price, and the right to buy the rest at \$1.25 an acre any time within ten years. Their main idea was to prevent speculation. Evans later advocated similar reforms in Young America, which became the organ of the Land Reform Association. This paper was discontinued in 1846 but agitation for free land did not cease.⁶⁶

Other journals advocated the same principle. Some of the supporters mentioned by George W. Julian, himself one of the early advocates, were Horace Greeley, Parke Goodwin, Samuel Tilden, William Henry Channing, Cassius M. Clay, Charles A. Dana, William Legett, Arnold Buffum, Marcus Morton, Wendell Phillips, Gerrit Smith, Theodore Parker, and William Lloyd Garrison.⁶⁷ The Brook Farm experiment was in progress and the promoters of that venture favored free grants. In the meanwhile, the old parties were ridiculing the idea, calling it communistic and socialistic.⁶⁸

Horace Greeley wrote many editorials advocating land reform which were widely read. He continued to be alert toward

66. George W. Julian, "The Spoilation of the Public Lands," North American Review, Vol. CXLI, p. 178.

67. Ibid., p. 179.

68. Ibid., p. 179.

any action in Congress.

In 1844 The National Reform Association, mentioned above, addressed a letter to Polk to solicit his views. In it they suggested that no more public lands be sold, but that actual settlers be permitted to move on to these lands and hold them as long as they actually lived there. When they wished to leave they were to be permitted to sell their improvements to anyone who cared to occupy on the same terms. This was a labor movement manifestation. Polk did not reply to the inquiry.

After 1845 the demand for small tracts of free lands to actual settlers had a growing influence upon Congressional action in disposing of the public domain. Homestead bills were introduced in almost every session of Congress.

Chapter II

HOMESTEAD LEGISLATION BEFORE

The first requests for grants of free land to settlers came in the early years of our national history. Petitions came to Congress from the Ohio settlers in 1797, from Mississippi two years later, from Indiana in 1806, and from Ohio in 1812, asking for land donations of various sizes. Some were referred to committees, but no action was taken. In 1828 the Committee on Public Lands in the House made a report favorable to the homestead principle.¹ In 1840 the settlers of Oregon petitioned for land, and they got it in 1850. The same action was taken in Florida. Benton's graduation plan included the rudiments of a homestead idea for it provided that refuse lands remaining in market a certain length of time at the minimum graduated price should be granted to those who were not able to buy. Lands confiscated for taxes had been granted in Arkansas. An amendment to a graduation bill was offered by Thomasson of Kentucky during the second session of the twenty-eighth Congress giving forty acres to heads of families. But this too, was to be granted from refuse lands.² During the first session of the twenty-ninth Congress, Orlando B. Ficklin of Illinois introduced into the House a "bill to grant land to actual settlers under certain limitations," which was read

1. Benjamin Hibbard, op. cit., pp. 248-250.

2. Congress Globe, 26 Cong., 1 Sess., pp. 60, 103, 296.

twice and committed on March 27, 1846.³ Nothing more was done with the measure. That it did not meet with the approval of the land reformers is quite evident from an editorial in the New York Weekly Tribune for April 18, 1846:

We have before us a bill, 329 H. R., introduced by Mr. Ficklin of Illinois, proposing to give each head of a family eighty acres of Public Land on condition of settlement, cultivation, etc., said tract to be inalienable for Debt for the space of ten years, and no man to have but one tract on this basis.

It is amazing how hard a politician can work to get round a salutary principle when it would be far more natural and better to embrace it at once.

Ficklin borrowed the idea of the National Reformers, and so bewitched and mangled it that its own father would not recognize--certainly would not own it. Land Speculation, and Land Monopoly are the evils which require eradication. The evil is not so much in the price of Public Lands, which are easily obtained now if Speculators were only kept off of them. No poor settler is ever molested by the Government, even though he cannot pay the \$100 asked for an 80 acre lot; but Speculation clutches all the best tracts at ten shillings per acre, and compels the actual settler to pay five to fifty times as much; holds large tracts out of use, prevents the timely erection of mills, cloth works, etc.---This is not in the least guarded against by Mr. Ficklin's bill--nay, the eighty acre tracts given away by it would soon become themselves the football of Speculation; for after raising five crops thereon the settler, (who can only so obtain it by swearing himself too poor to pay for it) is allowed a title in fee, and can sell to whom he pleases.

Several men claimed to be the father of the real homestead idea. Hallum, in his history of Arkansas, claims the honor for Governor Conway of that state, for he recommended in 1840 that a law be passed donating to every individual who should settle and improve a quarter section of land providing

3. Congress Globe, 28 Cong., 2 Sess., p. 241.

the taxes were kept up. He says Andrew Johnson appropriated the idea.⁴ Winston in his life of Johnson, says only Johnson's bill became a law. Still others claim the paternity of the measure for Galusha Grow of Pennsylvania.⁵

The campaign for free homesteads really opened in the Twenty-ninth Congress when several distinct bills were introduced. On March 9, 1846, Felix G. McConnell of Alabama, introduced in the House a "bill to grant to the head of a family, man, maid, or widow, a homestead not exceeding one hundred and sixty acres of public lands."⁶ On April 14, 1846, McConnell presented a memorial from citizens of Albany County, New York, praying Congress to grant "tax-paying, road-working, mustering, and war-fighting" poor the freedom of occupying and cultivating lands not exceeding one hundred and sixty acres.⁷ McConnell tried repeatedly to bring up his bill or to offer it as an amendment to other measures, but all his moves failed.⁸

On March 12, 1846, Andrew Johnson of Tennessee asked leave to introduce a "bill to authorize every poor man in the United States, who is the head of a family, to enter 160 acres of the public domain, without money and without price."⁹ On

4. Sioussat, p. 264.

5. James T. DuBois and Gertrude S. Mathews, Galusha A. Grow, Father of the Homestead Law.

6. Congress Globe, 29 Cong., 1 Sess., p. 473.

7. Ibid., p. 672.

8. Ibid., pp. 1045, 1192, 1200.

9. Ibid., p. 492.

March 27, he obtained leave to introduce the bill, and it was referred to committee.¹⁰ On July 10, 1846, while the House was debating the Senate bill to graduate the price of public lands, George Houston of Alabama submitted an amendment for granting each head of a family who owned no real estate, 160 acres of land which had been offered for sale for two years at the lowest graduated price. A patent could be obtained after three years of residence.¹¹

Andrew Johnson tried to make his homestead measure an amendment to this amendment. Because this is his first bill it is interesting to note its main features. The full text is found in the Appendix B. It granted 160 acres of public land to heads of families, destitute of means to purchase a quarter-section. Patents were to be issued after four years of continued residence on the land which was made inalienable for debts.¹² The amendment was rejected.¹³

Darragh of Pennsylvania offered an amendment similar to Houston's, except that it applied to lands which had remained unsold for ten years. It too failed to pass.¹⁴ The graduation bill with certain privileges to preemptors became a law with no homestead amendment. Ficklin of Illinois had also introduced a bill providing for grants of eighty acres to the head

10. Ibid., p. 563.

11. Congress Globe, 29 Cong., 1 Sess., p. 1071.

12. Ibid., p. 1077.

13. Ibid.,

14. Ibid.

of a family, on March 27, 1846.¹⁵ Jacob Brinkerhoff of Ohio offered an amendment to the bill providing for establishment of military posts in Oregon offering tracts of land to men who would settle on and occupy them for five years. It was rejected.¹⁶ The fact that these measures were presented by western representatives from Illinois, Pennsylvania, Tennessee, Ohio, and Alabama, indicates the widespread interest of that region in the land question. During the second session of the Twenty-ninth Congress discussion of public lands in both houses was confined to graduation measures.

In the first session of the Thirtieth Congress, the homestead principle was again before the House. On January 14, 1848, Smith of Indiana gave notice of a bill to discourage speculation in the public lands of the United States, and to appropriate them in limited quantities to actual settlers.¹⁷ It did not come up for consideration. On July 10, 1848, a similar bill was introduced in the Senate by John Hale of New Hampshire. It was referred to the Committee on Public Lands, but was not reported back.¹⁸

By 1848 the demand for free land was strong enough so the Free-Soil platform contained the following plank favoring it.

Resolved, that the free grant to actual settlers, in consideration of the expenses they incur in making settlements in the wilderness, which, are usually fully equal to their actual cost, and of the public benefits resulting

15. Ibid., p. 562.

16. Ibid., p. 655.

17. Cong. Globe, 30 Cong., 1 Sess., p. 181.

18. Ibid., p. 916.

therefrom, of reasonable portions of the public land under suitable limitations, is a wise and just measure of public policy, which will promote, in various ways, the interest of all the States of this Union; and we, therefore, recommend it to the favorable consideration of the American people.¹⁹

After this we find more activity both in and out of Congress to secure free land. From now on the homestead policy was considered as a separate question and not in connection with discussion of other policies.) There had been a fraud in the election of the representative from the district of New York in which Horace Greeley lived. When a new election was held to fill the vacancy Greeley was chosen for the three remaining months of the Thirtieth Congress.²⁰ He had before this accepted the public land program advanced by the Workingmen's Party or Young Americans, having overcome his early fear of exodus from the old states. Their pamphlets entitled Vote Yourself a Farm were having a wide circulation. In the pages of the Tribune he "portrayed the fears, struggles, and hardships of the pioneer with imagination and exactitude. He told how purchase of land absorbed the savings of the pioneer, who then had to mortgage his tract for tools, and other necessities, assuming a load of debt. Especially did Greeley deal with the evils of land speculation, picturing vividly the greed of the speculator and his lack of public spirit."²¹ He had also by this time given

(19). James Hopkins, A History of Political Parties in the United States, p. 276.

20. Horace Greeley, Recollections of a Busy Life, p. 216.

21. Constance Mayfield Rourke, Trumpets of Jubilee, p. 282.

wide currency to the demand for free homesteads. Many Whigs opposed him, and said the Tribune was Whig only on the subject of the tariff. The Sun appealed to men of all parties to put down such doctrines as they were destructive of the social system.²² It is not surprising, then, to find Greeley giving notice on December 5, 1848, of a "bill to discourage speculation in public lands, and to secure homes thereon to actual settlers and cultivators."²³ On December 13 the bill was read and referred to the Committee on Public Lands.²⁴ Before any further action was taken on the bill Greeley presented many petitions for lands, which are especially interesting, as they show how widely known the Tribune arguments must have been. On January 9, 1849, he presented one from William Barr and others of New York and another from Raymond Whitcomb, and others of Illinois "for a stoppage of the sales of public lands, and the free allotment of the same in limited quantities to actual settlers."²⁵ On February 3 he presented one from 117 citizens of Madison County, New York, on February 13 one from Ohio citizens, on February 20 another from the same state, and two from different counties of New York, and on February 24 three others from New York and Pennsylvania. One of these was from a group of 418 in New York, mostly of German birth.²⁶ This

22. Ibid., pp. 282-3.

23. Cong. Globe, 30 Cong., 2 Sess., p. 13.

24. Ibid., p. 38.

25. Ibid., p. 204.

26. Ibid., pp. 429, 520, 550, 559, 590.

was only natural since the great tide of German immigration to this country followed the European revolutionary movements of 1848.

On February 27, 1849, Collamer from the Committee on Public Lands reported Greeley's bill without amendment. The main features of the proposition were that every citizen or applicant for citizenship could claim and settle on any quarter section of public lands subject to private entry at the minimum price and receive a certificate of right of preemption for seven years. If he actually cultivated the land during that period he was to be permitted at the end of the seven years to permanently occupy forty acres, if single, and eighty acres if the head of a family. This could be devised to any heir who would not then hold over one hundred sixty acres of land. The rest of the one hundred and sixty acres could be purchased any time during the same seven year period at \$1.25 per acre plus interest. The bill provided further that any person might purchase any amount he would use and improve for himself at \$1.25 an acre, but if he did not make affidavit it was for his own use he should pay \$5 per acre.²⁷

The provisions are interesting for they show almost complete agreement with the proposals of the land reform associations previously discussed. Greeley spoke on the bill, stressing the fundamental doctrine of the reform associations that a man is entitled to live somewhere, even if he has no

27. Cong. Globe, 30 Cong., 2 Sess., p. 604.

money. He expressed a desire to respect the pledges making the public lands security for the Mexican War loans.²⁸ On the same day the bill was tabled by a viva voce vote, the demand for yeas and nays being refused.²⁹ Greeley's bill was not taken up later, and since he was not again a member of Congress this ended his legislative efforts for free land.³⁰ His interest, however, continued, as we shall see in his later Tribune articles.

On December 11, 1848, or just six days after the notice of Greeley's bill, Andrew Johnson of Tennessee gave notice of a bill with the following title: "A bill to make the 'soil free' or provide an inalienable home of one hundred and sixty acres of the public domain for every poor man who is the head of a family and a citizen of the United States, or a widow who is the mother of a minor child or children, 'without money and without price.'"³¹ Johnson was ill for the remainder of the season, and he entrusted his bill to George W. Jones, his colleague from Tennessee, who tried to introduce it on February 14 and February 16, 1849, but failed.³²

Elisha Embree of Indiana moved the suspension of rules

28. Ibid.

29. Ibid., p. 605.

30. While his bill was being discussed a western member asked him why New York should busy herself as to the disposal of the Public Lands. Greeley himself tells us, "I responded that my interest in the matter was stimulated by the fact that I represented more landless men than any other member of the floor." This is told in Recollections of a Busy Life, p. 216.

32. Cong. Globe, 30 Cong., 2 Sess., p. 25.

32. Ibid., p. 548.

on February 5, 1849, to offer a resolution that the Committee on Public Lands be instructed to inquire into the expediency of granting a quarter section of land to any person owning no real estate, who would improve and occupy the same for five years.³³ Such a resolution would come from the representative of a western state.

Several petitions for free grants were presented to the Senate during this same session, but no homestead measures were introduced in that body.³⁴ During the first session of the Thirty-first Congress there was much discussion of land measures, but most of them were on bills for a graduated scale or bills to extend time under the preemption laws. There were also three homestead measures, which will be considered in the order of their introduction. On February 4, 1850, Timothy Young of Illinois, a member of the Committee on Agriculture, introduced a bill to grant one hundred and sixty acres to anyone who would live on and cultivate a portion thereof for four years. This was referred to the Committee on Public Lands, but was not reported back.³⁵

On January 7, 1850, Andrew Johnson gave notice of his intention to introduce a homestead bill.³⁶ When he found the Committee on Public Lands had its own bill for a graduated

33. Ibid., p. 454.

34. Ibid., pp. 423, 488, 560.

35. Cong. Globe, 31 Cong., 1 Sess., p. 279.

36. Ibid., p. 131.

scale of prices he attempted to introduce his measure from the Committee on Public Expenditures of which he was a member. It was not received, for as pointed out by Vinton of Ohio, it was not within the jurisdiction of that committee.³⁷ On February 27 he introduced the bill and asked that it be referred to the Committee on Agriculture, which he believed was more friendly than the Committee on Public Lands.³⁸ The bill was, however, referred to the Committee on Public Lands.³⁹ Later in the session Andrew Johnson changed the title of his measure to a "bill to encourage agriculture and for other purposes." It was introduced on June 4, 1850, and after the second reading was referred to the Committee on Agriculture, there being now no objections. On July 25, 1850, it was reported back from this committee without amendment by Young of Illinois.⁴⁰ On the same day Johnson made his first speech on the bill in which he listed benefits that would result from it and discussed possible objections that would be raised. He pointed out that he had introduced a similar bill five years before, but that it was considered less impractical now that the public mind had been directed to it. He said Congress since that time had made liberal donations of the public domain to aid public in-

37. Cong. Globe., 31 Cong., 1 Sess., p. 408.

38. The Committee on Public Lands consisted of the following members, only two of whom were from the South:

1. Littlefield--Maine	4. McMullen--Virginia	7. Stanton--New York
2. DeBerry--North Carolina	5. Young--Illinois	8. Bennett--New York
3. Risley--New York	6. Casey--Pennsylvania	9. Cable--Ohio

39. Cong. Globe., 31 Cong., 1 Sess., p. 423.

40. Ibid., pp. 448, 1122, 1449.

stitutions and to reward those in government service. He claimed that this bill if passed earlier would have made the bounty land act unnecessary. He believed the government had no right to withhold lands from citizens who wanted to settle on them, for the proper object of government was "to effect the greatest possible good to the greatest possible number."

Johnson continued in the following words:

"The domain of the United States belongs to the people as a whole; it has been purchased with their treasure, and won by their valor; and they are entitled to its use, as much so as they are to the use of the air, fire and water. Government has no more authority to restrain them in the use of one than in the use of the other. They are the four great elements indispensable to the existence of mankind, and Government could with the same propriety undertake to withhold the use of fire, water, and air from its citizens, as the use of their own soil for cultivation and support."

He argued there would be increased income to the Treasury for the prospective farmer would have more money with which to buy imported goods, on which there was a tariff. He estimated each family on the homesteads would have an increased buying power of \$100 a year for purchasing foreign goods. In seven years the tariff on such purchases would be \$210, or more than the present selling price of a quarter section. He believed there would be a stronger tie between the citizen and the government which would be an incentive for responding to calls for service. He quoted the area of the public domain in 1848 as 1,442,216,168 acres, an amount which would not be disposed of at the current rate in 700 years. On the basis of those

figures and the \$30 a year estimate of tariff income he estimated the government would secure from families on each homestead \$24,400 in 600 years, which would be lost if the land were not occupied. He insisted that men would make better citizens if they were land owners and that general poverty would be reduced. He said the objection was made that the land was pledged for the national debt. He agreed it was pledged for the loan authorized January 28, 1847, but in February of the same year grants of the public lands were given as bounties to the soldiers of the Mexican War. Also the interest and principle of that loan were being paid out of the Treasury without regard to any particular fund. He believed those two acts showed that the income from the lands was not looked upon as a means of paying the national debt. He summed up his estimate of the importance of the measure by saying, "This bill would do more good for the common people than all the legislation for the last quarter of a century."⁴¹ The bill did not, however, come to a vote.

The third measure to come up during this session was a bill to discourage speculation and secure homes to actual settlers, introduced the same day as Johnson's bill by Henry Moore of Pennsylvania. It was referred to the Committee on Public Lands, and since that committee favored graduated

⁴¹. Cong. Globe, 31 Cong., 1 Sess., pp. 1449-1450, and App., pp. 950-952.

prices, it was not reported.⁴² Because none of these three measures came to vote it is impossible to show sectional attitudes at this time except that all the bills were introduced by Western men, and that Brown of Mississippi made a short speech in support of Andrew Johnson's measure.⁴³ This indicates the South had not as yet taken a united stand against free grants of land in small tracts.

Public land policies were discussed at length in the Senate during the same session. On December 24, 1849, Walker of Wisconsin presented a resolution which had been passed by the legislature of his state favoring cession of the public lands to the state in which they lay on condition that they be granted in limited quantities to actual settlers.⁴⁴ This shows a combination of the older idea of ceding to the states with the homestead policy. On January 28, 1850, Walker brought in a bill embodying these principles. It was referred to the Committee on Public Lands and not reported until late in the session. It was taken up on August 13, 1850, but after Walker's speech in its defense it was repeatedly postponed, and did not come to a vote. The provisions of the bill, which planned for disposing of the land after it became the state's domain made it a homestead measure. Some of Walker's arguments for such a policy were decidedly in advance of his time. He said that

42. Ibid., p. 424.

43. Ibid., p. 1450.

44. Ibid., p. 74.

man has a natural right to land which will give him food, shelter, and raiment, make charity unneeded, and tend to keep family ties unbroken. He pointed out that it would make labor independent, as they could demand enough for their work to improve living standards. He argued that land reforms should be made while our land was plentiful, so as to prevent conditions like those of Ireland, and that it was time to abandon a policy of holding the lands as a source of revenue. He supported this last argument by quoting from President Jackson's message of December 14, 1832. Because this quotation is referred to repeatedly in later sessions it is given as follows:

"It seems to me to be our true policy that the public lands shall cease as soon as practicable, to be a source of revenue, and that they be sold to settlers in limited parcels, at a price barely sufficient to reimburse the United States the expense of the present system....To put an end forever to all partial and interested legislation on the subject, and to afford to every American citizen of enterprise the opportunity of securing an independent freehold, it seems to me best to abandon the idea of raising a future revenue out of the public lands."

The government would really lose no revenue, he argued, as the tariff receipts would be increased. After pointing out the shortcomings of the propositions of Douglas, Houston, and Webster, he ended by sounding a warning to members, that they might not heed petitions now but in the next Congress they would do so for, as he warned, "this matter has taken hold upon the hearts, feelings, and reason of the democratic laboring millions of the land."⁴⁵ He told them that already the people realized

⁴⁵. Cong. Globe, 31 Cong., 1 Sess., pp. 210, 233, 1570-1573, 1604.

the remedy was through the ballot box, and he pledged that his state of Wisconsin would not cast ballots for anyone opposing land reforms.

A petition was presented to the Senate in January which showed the influence of the land reformers. The petitioners objected to traffic in public lands and complained that Americans were homeless while Europeans were buying up our lands.⁴⁶ Another petition to the same effect was sent in from 1,500 citizens of Cincinnati and was presented a few days later.⁴⁷

On the same day as Walker's resolution was read, Stephen A. Douglas of Illinois gave notice of a bill, which was introduced and referred to the Committee on Public Lands three days later, December 27. This would give one hundred sixty acres of land to actual settlers who cultivated a portion of it for four years.⁴⁸ He did not limit its operation to citizens for as he later explained he wanted the foreigners and immigrants to be able to avail themselves of the opportunity.⁴⁹

Seward of New York presented several petitions from the legislature of that state. This body asked that land be granted to the Hungarian exiles and instructing their representatives in Congress to use their influence to secure the enactment of a law granting limited quantities of land to needy citizens who

46. Ibid., p. 196.

47. Ibid., p. 469.

48. Ibid., pp. 75, 87.

49. Ibid., p. 263.

would reside upon them. As this was in agreement with a resolution submitted by Webster, he asked for the reading of the resolution, which was done.⁵⁰

Webster's resolution called for a law differing in some respects from previous homestead bills. It would give a quarter section of public land to citizens or those who had declared their intention to become citizens, after three years of cultivation and residence. It further provided neither the person receiving the patent, nor his heirs could alienate the land except by devise.⁵¹

A little later, on January 30, 1850, Sam Houston of Texas brought in a resolution requesting the Committee on Public Lands to grant lands to citizens and those immigrants who were here before the following March. Neither of these classes could own property worth \$1500. Patents would be issued at the end of three years of residence.⁵²

There were now before Congress bills from widely separated sections of the country. In the course of the debate Henry Foote of Mississippi made the charge they were bids for popularity.⁵³ Willie Mangum of North Carolina showed his opposition by making light of the numerous measures and suggesting another, that 320 acres of land and a negro apiece be given to each settler.⁵⁴ George Badger of North Carolina expressed

50. Cong. Globe, 31 Cong., 1 Sess., p. 231.

51. Ibid., p. 210.

52. Ibid., p. 262.

53. Ibid., p. 263.

54. Ibid., p. 263.

the opinion it was dishonest to give the lands away when they were pledged for the Mexican war debts.⁵⁵ William Dawson of Georgia believed the effect would be the establishment of a great charity fund for the relief of oppressed foreigners, and saw in it the aim of protectionists to destroy the land funds for the purpose of raising the tariff.⁵⁶ These remarks show the attitude of the South where there was beginning to be a very general sectional opposition to free land.

All of these propositions had been submitted to the Committee on Public Lands, and on July 16, 1850, Felch of Michigan from that committee submitted an unfavorable report, expressing the opinion that they, the committee, deemed it inexpedient to change the present system.⁵⁷

It was during this session, on September 19, 1850, that Congress passed the law for creating a surveyor general for Oregon and giving land to settlers there.⁵⁸ This was one of the first victories for the homestead principle.

Early in the second session of the Thirty-first Congress Johnson again attempted to introduce his bill, and after many trials it was brought up for discussion in January, but failed to come to a vote. It was supported by Johnson, Hilliard of Alabama, and George Julian of Indiana, who gave the main speech in its favor. He said parliamentary expedients had been

55. Ibid., p. 264.

56. Cong. Globe, 31 Cong., 1 Sess., p. 265.

57. Ibid., p. 1391.

58. Ibid., p. 1867.

employed to avoid direct action on it, because those who opposed it knew the people wanted it. His arguments in its favor were very similar to those previously given by Johnson and Walker. He said that it was a natural right for the landless to have a home and with such a law the country would be more prosperous and productive. He argued that there would be less crime and starvation, and that the potential army strength would be increased for land owners would rally to the defense of their homes. The reduction of revenue, he said, was not a consideration for the cheaply sold, assignable bounty warrants would make sales nominal for years to come. He included in his speech a further argument which must have aroused the antagonism of the South. The anti-slavery effect of homestead legislation had been understood before, but not openly expressed on the floor of either house. He argued for home ownership comparing the prosperity of Ohio with its free labor system with the conditions in Virginia, which, he said, was dying under slave labor. He urged this measure as a means of settling the slavery question saying:

"Slavery only thrives on extensive estates. In a country cut up into small farms, occupied by as many independent proprietors who live by their own toil, it would be impossible--there would be no room for it. Should the bill now under discussion become a law the poor white laborers of the South, as well as of the North, will flock to our territories; labor will become common and respectable; our democratic theory of equality will be realized; closely associated communities will be established; whilst education, so impossible where slavery and land monopoly prevail, will be accessible to the people through their common schools; and thus physical and moral causes will

combine in excluding slavery forever from the soil. The freedom of the public lands is therefore an anti-slavery measure. It will weaken the slave power by lending the official sanction of the government to the natural right of man, as man, to a home upon the soil, and of course to the fruits of his own labor. It will weaken the system of chattel slavery, by making war upon its kindred system of wages slavery, giving homes and employment to its victims, and equalizing the condition of the people. It will weaken it by repudiating the vicious dogma of the slave holder that the laborious occupations are dishonorable and disgrading. And it will weaken it as I have just shown, by confining it within its present limits, and thus forcing its supporters to seek some mode of deliverance from its evils. Pass this bill therefore, and whilst the South can have no cause to complain of northern aggression, it will shake her peculiar institution to its foundations. Her three millions of slaves, now toiling, not under the stars, but the stripes of our flag, robbed of their dearest rights, inventoried as goods and chattels, and plundered of their humanity by law, may look forward with new hope to their final exodus from bondage. A number of southern gentlemen view the subject differently.... and I am satisfied to see them on the right side.... Had this policy been adopted by the government in 1832 when General Jackson first recommended it, it is highly probable that Texas, whether in or out of the Union, would never have been a slave country.... The same policy would have prevented our Mexican War and saved the country millions of money and thousands of lives that were sacrificed in that unsanctified struggle for the extension of human bondage." 59

In the Senate no homestead bill was presented during the session, but in the debate on Thomas Benton's bill to cede certain lands to the states and make grants to settlers, the debate turned on the value of homesteads. Felch of Michigan opposed free grants because the loss would have to be made up by tariffs, it violated the Act of January 28, 1847, pledging the land for loans, it would reduce the value of land previously bought by westerners, it would reduce the value of bounty warrants held by the soldiers, it would reduce the income from the sections reserved for school purposes,

and because he believed only a few of the landless would be interested enough in agriculture to take land. ⁶⁰ Walker of Wisconsin supported the measure with arguments similar to those of the last session.

In the legislation attempted during the years 1849-1852 we find a transition stage in land policies. A few westerners whose constituents petitioned for land and a few easterners, like Horace Greeley , with reform ideas, persisted in their efforts for homesteads, but the discussion still centered largely around the older demands of cession to the states , and a graduated scale of land prices. The debates which took place, however, helped to popularize the idea so it became one of the great national questions by the opening of the Thirty-second Congress.

60. Cong. Globe, 31 Cong. 2 Sess., Appendix, pp.103-112.

Chapter III

THE HOMESTEAD ACT AS A NATIONAL ISSUE 1852-1857

During the ten year period between 1852 to 1862 we find continued attempts to secure bills granting free lands. A few leaders became persistent in their efforts, but they were blocked by a growing opposition in the South where the leaders feared more free states in the union, and by New England members because of their fear of emigration from their own section.

Andrew Johnson was again a member of the Thirty-second Congress from Tennessee. As soon as the House assembled for business he introduced a bill prefaced by a statement of its purpose which was "to improve agriculture, commerce, manufacturing, and other branches of industry," by granting any man, head of a family, and a citizen of the United States, one hundred sixty acres of land on condition of occupancy and cultivation.¹ Because of the purpose stated it was referred to the Committee on Agriculture, from which chairman McMullin reported it on January 6, 1852, with an amendment which restricted its benefits to persons whose estate did not exceed \$500 in value.²

On January 7, Johnson on leave, introduced the bill, which was read a first and second time. An attempt was made to postpone it and make it a special order for the first Monday

1. Cong. Globe, 32 Cong., 1 Sess., p. 58.

2. Ibid., p. 211.

in February. Orr of South Carolina objected and the bill was laid on the speaker's table.³ On March 3, 1852, the House resolved itself into a Committee of the Whole on the state of the Union on the special order of the homestead bill, which action it continued to take almost daily until May 12. Not much was accomplished, for although forty-two members availed themselves of the privilege of speaking one hour while the measure was in committee, the majority discussed extraneous matters. Only a few of the speakers and their outstanding arguments will be noted.

In the absence of McMullin, the chairman of the Committee on Agriculture, Dawson of Pennsylvania spoke in his place. He pointed out that the encouragement of settlement, and the development of resources should be the aim of public land policies as well as the collection of revenue. He quoted figures to show the sales to date had more than reimbursed the government for the cost of the lands. He expressed his belief that settling the land would increase our commercial prosperity through necessity of exporting the wheat surplus and supplying the farmer's demands for imported goods. Since our revenues now exceeded our expenditures by \$11,000,000, he believed it was a good time to have the land cease to be looked upon as revenue. Furthermore, the report of the Secretary of the Treas-

3. Cong. Globe, 32 Cong., 1 Sess., p. 225.

ury showed lands could not be depended upon for revenue as it would take sixteen years to absorb the grants made to soldiers and to the states for public improvements. He maintained Article IV, Section 3 of the Constitution gave Congress unquestionable power over the public domain. The section reads: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."⁴

On March 5, Brown of Mississippi offered an amendment which would extend the preemption law to all United States territories, and perpetuate the right as long as the settler did not abandon the land for as long as six months, nor fail to pay taxes. Neither the land nor its improvements could be alienated for debt, and the right could be inherited by widows or infant children. The preemptor could get absolute title any time he wished by paying the \$1.25 per acre.⁵ A few days later, on March 9, Harris of Tennessee offered as a substitute amendment a graduation bill.⁶ When the bill came up on March 30, Andrew Johnson himself offered a substitute to the first section so not only men who were heads of families and citizens of the United States could avail themselves of it but also any man or

4. Cong. Globe, 32 Cong., 1 Sess., App., pp. 258-261.

5. Cong. Globe, 32 Cong., 1 Sess., p. 685.

6. Ibid., p. 707.

widow who was head of a family whether native born of naturalized before January 1, 1852, not the owner of land, and not worth over \$500 could enter.⁷ On the same day Fuller of Maine opposed the measure with the arguments which became common in the manufacturing East. He believed the bill was unconstitutional, and to support his view quoted all the acts by which the original land states ceded their lands, pointing out that the lands were to be held in trust for the citizens. He believed it was unfair for it took the land away from the people in general and gave it to a special class of foreigners, or Americans of a limited age, who could emigrate. He doubted that such special inducements would encourage a desirable class to move into the West.⁸ Churchwell of Tennessee, Grow of Pennsylvania, and Skelton of New Jersey spoke for the bill giving the usual arguments. Skelton mentioned the prevailing low wage of 50¢ a day for common laborers in the East which made it impossible to save enough to buy farms. While he believed it was right to give bounty lands to soldiers he believed it was equally good to give it to frontiersmen, who would defend the territory against Indian attacks.⁹ A new suggestion was made by Fowler of Massachusetts who proposed setting aside a region west of Missouri and Arkansas for the colored people, so it would be possible to end this institution of slavery which its

7. Cong. Globe, 32 Cong., 1 Sess., p. 926.

8. Cong. Globe, 32 Cong., 1 Sess., p. 926 and App., pp. 386-389.

9. Ibid., App., pp. 380-383.

advocates hold must continue until white and colored people separated.¹⁰ On April 1, Porter of Missouri supported the bill.¹¹ On April 6, Dunham Cyrus of Indiana summed up the usual advantages claimed for it.¹² On the following day, Averitt of Virginia rose to protest against it saying it injured the holders of the bounty land grants, and that Congress had no power to pass such a law for "our functions in regard to the public lands are fiduciary. We act as trustees for the people of the United States to whom the lands belong--as trustees bound to conform to our power of attorney--the Constitution." He charged it was class legislation.¹³ On April 8, the time was taken by William Polk of Tennessee and Joseph Chandler of Philadelphia, Pennsylvania, speaking for the measure.¹⁴ On April 14 the measure was again the subject of discussion. Timothy Jenkins of New York repeated many of the things previously raised as objections and added the further ones that the bill would benefit the poor, but aiding this class was a state and not a national function. He argued the bill would really harm the poor in the cities for if they were penniless they could not move out to take land and by giving up this revenue the import duties would have to be raised which would increase the cost of products. He believed the public lands should be retained as a source of revenue during war

10. Cong. Globe, 32 Cong., 1 Sess., App., pp. 394-396.

11. Ibid., App., p. 410.

12. Ibid., App., p. 407.

13. Ibid., p. 1004, 1018-1020.

14. Ibid., pp. 1021-22, App., p. 419.

time when other income would cease.¹⁵ On April 20, the measure was again the subject before the Committee of the Whole, but the speeches were on other matters until the hour was late and Willard Hall of Missouri got permission to have his remarks published. He argued for the measure especially defending the constitutionality. He suggested that if necessary the lands ceded by the original state grants could be exempted but he saw no difference between the power to grant the full amount from that used under the preemption law which recognizes that the settler is granted whatever over the minimum price the land might bring. He cited the success of the homestead policy in Texas and Arkansas.¹⁶ On April 22, R. S. Maloney of Illinois addressed the house for one hour in favor of the bill and Josiah Sutherland of New York spoke against it. Each elaborated on the usual arguments.¹⁷ Of the speeches made on the following day only Richard Yates of Illinois confined himself to the Homestead bill.¹⁸ On April 24, two of the speeches in favor were by western men, Orlando Ficklin of Illinois, and H. H. Sibley, the delegate from Minnesota, who suggested two years residence be required instead of five.¹⁹ On April 26, R. I. Bowie of Maryland summarized arguments against the bill, particularly stressing the government's need for the money and the undue encouragement of immigration. The same day

15. Cong. Globe, 32 Cong., 1 Sess., pp. 428-432.

16. Ibid., App., pp. 436-440.

17. Ibid., p. 1170, App., pp. 489-91, 729-738.

18. Ibid., p. 1173.

19. Ibid., p. 1181-83, App., pp. 485-488.

Thomas Florence of Pennsylvania presented a petition several yards long signed by citizens of the city of Philadelphia in favor of granting public lands in limited quantities to actual settlers.²⁰

A few days later Albert Brown of Mississippi obtained the floor in defense of the measure and his own amendment to it. He pointed out that foreigners were not undesirable unless they congregated in the cities. He said it had been charged that immigrants had anti-slavery attitudes, and that passage of this bill would only "nerve the arm of an enemy" of the South. He replied to this by saying, "If slavery is to be defended by excluding those from abroad who have prejudices against it, its doom is fixed, and the sooner the fiat for its extinction goes forth, the better. I place my defense of this institution on the high ground of moral, social, religious, and political propriety, and if I can not defend it on this ground, I will not defend it at all."²¹

He continued by saying he realized it would encourage settlement of the North, but since the lands were good there he knew they would be settled anyway, even at \$1.25 per acre. The process would merely be hastened. But since the good lands in the South were taken, that region would not get more settlers under the present arrangement. He reminded the House of all the means used to defeat the measure, by saying they went into Com-

20. Cong. Globe, 32 Cong., 1 Sess., p. 1198, App., pp. 479-81.

21. Ibid., p. 1207, App., pp. 511-514.

mittee of the Whole so there could be no ayes and nays, then they proposed endless amendments for the purpose of destroying it.

When Brown concluded, Samuel Parker of Indiana warned members that action was necessary for he said, "I hear the low mutterings of a rising storm from every part of the country in relation to these public lands, and it is the part of a wise man to heed the storm when it is rising." During his further remarks Parker read an amendment which he wished to offer at a later time. It would permit settlers who lived on lands five years to get a patent by paying twenty-five cents per acre. The proceeds were to be divided so one-third would go to the state's school fund, one-third would be prorated to all the states and District of Columbia for educational purposes, and the other one-third should be used to support a colonization society which would aid free negroes who wished to go to Liberia. He believed such colonization was desirable as freedmen stirred up agitation between the two sections.²² Mr. J. F. Millinson of Virginia objected to the bill on grounds of unconstitutionality, injustice to the old states, and inequality.²³

The two main speakers the next day were Andrew Johnson

22. Cong. Globe, 32 Cong., 1 Sess., p. 1208, App., pp. 504-508.

23. Ibid., App., pp. 524-525.

of Tennessee, and Fayette McMullin of Virginia, chairman of the committee that reported the bill. Johnson devoted his hour to answering some of the objections which had been raised. He reminded several speakers who opposed the bill on grounds of unconstitutionality, that they had voted for the bounty land grants to soldiers, and since the soldiers had been paid when discharged, such grants were not payments. He argued the Treasury as a whole, and not only the lands, had been pledged for the public debt. He also said this bill would increase and not decrease income to the Treasury by increasing capacity to buy imported articles and raising the value of the domain not taken as homesteads. He answered the charge of demagogism by saying he would reap no advantage as he expected redistricting would end his political career with the present Congress.²⁴ McMullin reviewed the activities of the last two months and expressed preference for Brown's amendment.²⁵

On May 6 Congress began serious consideration of the measure. When the first section was read together with the amendment of the Committee on Agriculture to it which would limit its benefits to those who were citizens by January 1, 1852, and who were not worth \$500, Moore of Louisiana moved to strike out the last limitation, which was done. Beale's proposition to strike out the first limitation failed. The

24. Cong. Globe, 32 Cong., 1 Sess., App., pp. 527-530.

25. Ibid., App., p. 520.

amendment of Stevens of Pennsylvania to strike out the part which would not permit a man to sell land which he already had to take advantage of the bill was agreed to. Parker of Indiana then moved to strike out the part which exempted land owners. This too was carried. But all these were useless for the amendment of the Committee on Agriculture was not agreed to. There were a large number of other amendments offered the same day but not any were of great interest unless we take notice of that offered by Clingman of North Carolina to issue warrants and locate them as was done with the bounty lands. He felt this would permit all to benefit. It was merely an attempt to kill the bill, and was defeated. Clark of Iowa moved to change the phrase "free of cost" to fifty cents an acre, which was an unusual suggestion from a western man. Parker of Indiana suggested twenty-five cents as this nominal price would cover the government cost so no one could say they were contributing to what was being given to homesteaders.²⁶

On May 10 serious discussion was again resumed. A new speaker was Alexander Stephens of Georgia who quoted from the deeds of cession of all the states that had ceded lands to show that in no one of them was the making of settlements an object in making such cession.²⁷

26. Cong. Globe, 32 Cong., 1 Sess., pp. 1275-1283.

27. Ibid., p. 1314.

Finally Johnson's substitute for the first section, noted before, came up. He withdrew it and the first section as adopted was read by the clerk as follows:

Every man or widow who is the head of a family, and a citizen of the United States shall, from and after the passage of this act be entitled to enter, free of cost, one fourth section of vacant and unappropriated lands, or a quantity equal thereto, to be located in a body, in conformity with the legal subdivisions of the public lands, and after the same shall have been surveyed.

The clerk then read Section 2 of the bill as originally drawn.

It was as follows:

And be it further enacted That the person applying for the benefit of this act, shall upon application to the register of the land offices, in which he or she is about to make such entry, make affidavit before the said register, that he or she is the head of a family, and is not the owner of any estate in land, at the time of such an application, and has not disposed of any estate in land, to obtain the benefits of this act, and upon making the affidavit with the register, he or she shall thereupon be permitted to enter the quantity of land already specified: Provided, however, that no certificate shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, the person making such entry, or if he be dead, his widow, or in case of a widow making entry, her heirs or devisee in case of her death, shall provide two credible witnesses, that he, she, or they, have continued to reside upon, and cultivate said land, and shall reside upon the same, or any part thereof, then in such case, he or they shall be entitled to a patent, as in other cases provided for by law.

The Committee on Agriculture proposed to amend this by striking out the words, "and is not the owner of any estate in land, at the time of such an application, and has not disposed of any estate in land, to obtain the benefits of this act," substituting therefor, "and does not intend to settle upon said

land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the government of ^{United States}, should inure, in whole or in part, to the benefit of any person except himself or herself; and that he or she is not worth to exceed the sum of \$500." The amendment was agreed to.²⁸

The third section was read as follows:

And be it further enacted, That the registers of the land office shall note all such applications on the tract books and plats of his office, keep a register of all such entries, and make return to the General Land Office, together with the proof upon which they have been founded.

This was not amended so the fourth section was read. It was as follows:

And be it further enacted, That all lands acquired under the provisions of this act, shall in no event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent thereof.

This section was amended by the Committee on Agriculture by inserting "or payment" after "satisfaction" and striking out at the end "or debts contracted prior to the issuing of the patents therefor." The amendment was agreed to. The fifth section was read as follows:

28. Cong. Globe, 32 Cong., 1 Sess., p. 1317.

And be it further enacted, That if at any time after filing the affidavit as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven by two or more respectable witnesses testifying upon oath, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said entry for more than six months at one time, then, in that event, the land so entered shall revert back to the Government, and be disposed of as other public lands are now by law.

The Committee on Agriculture, according to the chairman, proposed to amend this section by striking out the word "testifying." The question was taken on this amendment and it was agreed to.²⁹

The sixth section was then read by the clerk as follows:

And be it further enacted, That if any individual, now a resident of any one of the States or Territories, and not a citizen of the United States be at the time of making such application for the benefit of this act, shall have filed a declaration of intention as required by the naturalization laws of the United States, and shall become a citizen of the same before the issuance of the patent, as made and provided for this act, shall be placed upon an equal footing with the natural born citizens of the United States.

The Committee on Agriculture, according to the chairman, proposed to amend this section by striking out the word "natural" before "born" and inserting the word "native." The question was taken on this amendment and it was agreed to.³⁰

Grow of Pennsylvania moved to strike out the word "now," in the second line of the sixth section, because persons who immigrate to this country could not take advantage of it, and it made distinction between foreigners already in the country

29. Cong. Globe, 32 Cong., 1 Sess., p. 1318.

30. Ibid.

and those who might come later. Grow was opposed by Moore of Pennsylvania who thought we already had sufficient inducement to foreigners.³¹ Johnson of Tennessee proposed to amend the amendment by inserting in lieu of the word "now" the words "who was on the first day of January, 1852."³² The question was taken on the amendment to the amendment and it was agreed to.³³ The question recurred on the amendment as amended and it was decided in the negative.³⁴ So the amendment failed.

The seventh section was read by the Clerk as follows:

And be it further enacted, That no individual shall be permitted to make more than one entry under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act as shall be necessary and proper to carry its provisions into effect; And that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands patented under the provisions of this act, that they are now entitled to receive when the same quantity of land is entered with money to be paid by the party to whom the patent shall be issued.

The following amendment was reported by the Committee on Agriculture to come in at the end of the session, viz:

Provided, however, That all persons entering land under the provisions of this act, shall, as near as may be practical in making such entries, be confined to each alternate quarter section, nothing in this act shall be construed as to impair or to interfere in any matter whatever existing pre-emption rights.

31. Cong. Globe, 32 Cong., 1 Sess., p. 1318.

32. Ibid., p. 1318.

33. Ibid., p. 1318.

34. Ibid., p. 1318.

The question was put on this amendment, and it was agreed to.³⁵ So we find that the Committee of the Whole on the State of the Union agreed to all the amendments proposed by the Committee on Agriculture and failed to change the bill in any other way.

Evans of Maryland offered an amendment to the last section of the bill which provided that all cost of survey and entry should be paid by the settlers, making all expense be borne by the land itself. It failed of passage.³⁶

Houston of Alabama urged friends of the measure to vote and not talk and said the West did not want this measure, but they had been refused a bill to graduate land prices.³⁷ After this Brown of Mississippi moved to strike out all of the bill after the enacting clause, and to substitute his permanent pre-emption bill, the text of which is found in the Appendix.³⁸

Tellers were ordered on Brown's amendment which was agreed to as a substitute for the original bill by a vote of 67 to 56.³⁹ Numerous other amendments were offered but were either declared to be out of order, or failed of passage, and the bill as amended was reported to the house.⁴⁰

35. Cong. Globe, 32 Cong., 1 Sess., p. 1318.

36. Ibid., p. 1331.

37. Ibid., p. 1331.

38. Ibid., p. 1332. Appendix to this paper, p. 42.

39. Ibid., p. 1348.

40. Ibid., p. 1349.

Johnson of Tennessee then offered an amendment in lieu of the one adopted in the Committee of the Whole, the text of which was read by the clerk.⁴¹ There were few differences between this and Johnson's earlier homestead bills. The full text is found in the Appendix.⁴²

Jones of Tennessee asked Andrew Johnson if this amendment which he proposed in lieu of that adopted by the Committee of the Whole was substantially what the original bill would have been without the amendment made in the Committee of the Whole. Johnson answered it was substantially the same but vastly improved. Johnson's amendment was adopted by a vote of 108 to 57. Later the question was put on the passage of the bill and the vote was 107 to 56. An analysis of this vote shows all but ten of the nay votes were cast by representatives of the South and New England. Five of the remaining ten were from Ohio, which was now quite thickly settled. The full analysis is found in Table III in the Appendix.⁴³ The title adopted was: "A bill to encourage agriculture, commerce, manufacturing, and all other branches of industry, by granting to every man who is the head of a family, and a citizen of the United States, a homestead of one hundred sixty acres of land out of public domain, upon condition of occupancy and cultivation of the same, for a period

41. Cong. Globe, 32 Cong., 1 Sess., p. 1348.

42. Text on page 144 of Appendix taken from Cong. Globe, 32 Cong., 1 Sess., p. 1349.

43. Ibid., p. 1351. See Appendix page 134.

herein specified."⁴⁴

The bill was sent to the Senate the following day, May 13, 1852, where it was read the first and second time and referred to the Committee on Public Lands, from which it was reported August 6, 1852, by Felch who stated the majority of the committee were adverse to the passage of the bill.⁴⁵ The friends of the bill made several attempts to bring it up. One of those making such efforts was John Hale of New Hampshire. He had recently been nominated for the presidency by the Free-Soilers, so now Mason of Virginia accused him of bidding for votes and said he himself could not consent to a measure which would contribute to the support of a party which could only attain its ends by destroying the government.⁴⁶ Hale attempted to have prior orders postponed for the homestead bill but the vote was 16 yeas and 38 nays so the homestead bill was not taken up. An analysis of this vote shows it to be more sectional than in the House, the older members especially taking sides, as will be seen from the table. Only one vote for postponing in order to take up the bill came from the South or border states, and only six from the north east. Nine of the eleven votes from the middle west were for postponement. The complete analysis is found in Table IV of the Appendix.⁴⁷

44. Cong. Globe, 32 Cong., 1 Sess., p. 1351.

45. Ibid., pp. 1352, 2100.

46. Ibid., p. 2266.

47. Ibid., p. 2266. Analysis on page 135 of the Appendix.

The reasons given for the delay in considering the bill were the absence of Joseph Underwood, a member of the Public Lands Committee, and the delay in the return of the bill from the Land Office where information was sought. Salmon Chase of Ohio presented many petitions from citizens of his state asking the bill be passed.⁴⁸

Since there was no more extended debate on the bill for two years it might be well before leaving the consideration of homestead policies by the Thirty-second Congress to summarize the main arguments brought by its opponents and defendants. We have found its enemies charged that it was unconstitutional, that it would offer undue encouragement to European immigration, and that it would increase westward migration producing depopulation of the older states with a consequent shortage of workers. It was argued also that it would reduce the price of land already privately owned, it would make bounty land warrants valueless, it would be unfair to the railroads that had received grants, it would increase prices by making higher tariffs necessary, it was unfair to those who had homes and could not leave them to emigrate, and that relieving the poor was a state and not a national function. Its friends maintained that the Constitution gave Congress power to dispose of the land, that the city poor would be made into desirable home owning citizens, that a citizen had as a natural right

48. Cong. Globe, 32 Cong., 1 Sess., p. 1681.

to land as to air and sunlight, and that settlement would raise the value of contiguous land, and increase the wealth of the nation and was therefore equal to a money price.

In the second session of the Thirty-second Congress there was no homestead debate in the House. Cable of Ohio gave notice of a bill.⁴⁹ Eben Newton, also of Ohio, in a speech favoring homesteads, called attention to the public interest in the question in these words, "Individuals are sending up their petitions, the public press is raising its voice, and State Legislatures are passing their resolutions and instructions."⁵⁰

In the House, Chase of Ohio presented a joint resolution of the legislature of his state, and expressed his approval of the House bill, still on the Senate table.⁵¹ A week later Dodge of Iowa, a member of the Public Lands Committee gave notice he would bring up the House bill. It was later made a special order for January 26.⁵² At that time the amendments suggested by the Commissioner of the General Land Office were ordered printed and the bill was made a special order for February 21, 1853, but considerable debate arose about taking up the question. Those who wanted it to come to vote were Walker of Wisconsin, Dodge of Iowa, Gwin of California, Borland of

49. Cong. Globe, 32 Cong., 2 Sess., pp. 12, 29.

50. Ibid., Appendix p. 181.

51. Ibid., p. 43.

52. Ibid., p. 321.

Arkansas, and Rusk of Texas, all from western regions. Those who wanted further postponement were Butter and Bright of South Carolina, and Badger of North Carolina. When the question was taken the vote was twenty-three yeas and thirty-three nays so it was again postponed.⁵³

Dodge of Iowa attempted to make the homestead principle an amendment to an amendment of the Civil and Diplomatic bill, but this, too, failed by a vote of twenty-two yeas to twenty-four nays.⁵⁴ On February 24 Walker of Wisconsin offered an amendment to the Pacific Railroad bill to grant one hundred sixty acre tracts in the even numbered sections in a strip six miles wide along the railroads to actual settlers. On this occasion Adams of Mississippi and Charlton of Georgia spoke against the amendment and the homestead policy in general, stating they preferred graduated land prices. Dodge of Iowa defended the policy.⁵⁵ No vote was taken on any homestead bill.

In the first session of the Thirty-third Congress we find the homestead discussions again occupying considerable time. The southern members were more and more coming to the conclusion it was an abolition measure. Dawson and Grow, both of Pennsylvania, introduced homestead bills which were read the first and second time and referred to the Committee on Agriculture, of which Dawson was a member, on December 14, 1853.⁵⁶ The next day

53. Cong. Globe, 32 Cong., 2 Sess., p. 747.

54. Ibid., p. 1009.

55. Ibid., Appendix, pp. 202-205.

56. Cong. Globe, 33 Cong., 1 Sess., p. 47.

Dawson reported Grow's bill (H. R. No. 37) from committee.⁵⁷

On January 16, 1854, Jones of Tennessee succeeded in getting a suspension of rules by a vote of 138 to 53 to make the homestead bills a special order.⁵⁸ The one reported was a special order each day from February 14 till February 21.

The House in Committee of the Whole considered it on February 14, 1854, at which time Dawson of Pennsylvania addressed the body at length, reviewing all the older arguments for free land and answering objections made. He argued against perpetual preemption saying it would produce a condition of vassalage unsuited to American frontiersmen. He believed the preemption law then in effect was unsatisfactory for many spent their meagre savings to improve land on which they were unable to make payments. He objected to the bounty grant policy because it did not reward the defenders of the frontier.⁵⁹

On the following day, February 15, several amendments and substitutes were offered, all of which were ordered printed.⁶⁰ On February 16, William Sapp of Ohio spoke in favor of the bill particularly stressing the constitutional power of Congress to pass such a measure. He believed railroad grants and bounty land grants involved the same principles, and tabulated all such grants made before June 30, 1853, to show their

57. Cong. Globe, 33 Cong., 1 Sess., p. 52.

58. Ibid., p. 179.

59. Ibid., p. 419 and Appendix, pp. 179-186.

60. Ibid., p. 423.

magnitude.⁶¹ The bill continued to be before the House in committee, but much of the discussion was on the Kansas-Nebraska bill. On February 21, Dent of Georgia urged the House to defeat this measure which would take what belonged to all to give to an undeserving class of Americans and the paupers of Europe. He favored retention of the lands to swell the Treasury so there could be free trade, and to pay the soldiers of the War of 1812 who had gotten only forty acres of bounty lands.⁶² Smith of Virginia objected to the bill on the ground of constitutionality and claimed the westerners would occupy all the choice lands before easterners had a chance to move out to the region.⁶³ Before the committee rose that day Grow of Pennsylvania and Gerrit Smith of New York, tried to win support for the bill by explaining its good results. Dawson did not avail himself of his privilege to speak for an hour, but only answered a few objections, the main one being lack of constitutional power. He cited many instances from United States laws where Congress had exercised the power to make land grants.⁶⁴

When the bill came up for consideration by the House as a legislative body many amendments were offered to each section as it was read. Some will be noted here. As drawn, the first section provided that any person who was the head of a family,

61. Cong. Globe, 33 Cong., 1 Sess., p. 439 and Appendix, pp. 178-179.

62. Ibid., p. 459-460.

63. Ibid., p. 461.

64. Ibid., p. 461.

and a citizen of the United States could enter one hundred and sixty acres of unappropriated surveyed land in the public domain. Cobb of Alabama moved to amend it so as to permit single men over twenty-one years to enter, but to limit entries to agricultural lands subject to entry at \$1.25 per acre and not reserved for other purposes. Part of this was later provided for in the amendment of Yates of Illinois, and Barry of Mississippi which was approved and which changed the bill so it permitted anyone to enter who was the head of a family or had arrived at the age of twenty-one years. Cobb later withdrew his amendment. Davis of Rhode Island and Giddings of Ohio were in favor of letting negroes take land, but Dawson said the definition of citizen excluded them.⁶⁵ Dent of Georgia moved an amendment to include women over eighteen years in the benefits, but was unsuccessful.⁶⁶ Colquitt of Georgia moved to amend the bill so all persons who were heads of families and citizens of the United States would be entitled to land grants whether they settled it or not. This was not carried.⁶⁷ Bessel's (Illinois) amendment to include only agricultural lands offered at \$1.25 an acre was carried.⁶⁸ Dowdell of Alabama wanted fifty cents an acre inserted in place of "free of cost" so as to make the bill con-

65. Cong. Globe, 33 Cong., 1 Sess., p. 504.

66. Ibid., p. 504.

67. Ibid., p. 521.

68. Ibid., p. 521.

stitutional. After a discussion of the question by Dawson and Dowdell, the amendment was voted on and failed of passage.⁶⁹

A like suggestion from Hamilton of Maryland to insert twenty-five cents per acre was negatived. Peckham of New York wanted to allow one year before the bill would go into effect so as to give easterners a chance to reach the good lands before westerners took them all, but his suggestion was not approved.⁷⁰

Numerous other amendments to this section were suggested largely for the purpose of getting the privilege to speak.

The only amendments to Section 2 were the ones to make it conform to the first section by including those men over twenty-one who were not "heads of families,"⁷¹ and another permitting the right to inure to children under twenty-one instead of fourteen years. Both were offered by Jones of Tennessee.⁷²

The third section providing that land acquired by provisions of the bill were not liable for debts previously contracted led to considerable discussion. Philipps of Alabama moved to strike out the section because by granting lands Congress lost authority over them, and they should then be under the jurisdiction of the states in which they lay. It was not sustained.⁷³ Dawson cited numerous examples where deeds of cession had contained conditions.⁷⁴ Wright of Pennsylvania

69. Cong. Globe, 33 Cong., 1 Sess., p. 527.

70. Ibid., p. 529.

71. Ibid., p. 533.

72. Ibid., p. 536.

73. Ibid., p. 536.

74. Ibid., p. 536.

suggested the addition that the lands be exempt for debts contracted prior to entry and settlement. It was not agreed to.⁷⁵

The remaining sections were read and were not amended except for one clause added to Section 7 by Cobb of Alabama which provided that a man who owned less than one hundred sixty acres could enter enough adjoining land offered at the minimum price to make a total of one hundred sixty acres provided that he cultivate the whole or part of it.⁷⁶ Cobb also made an unsuccessful attempt to offer a graduation bill as a substitute.⁷⁷

Grow offered a substitute for the whole bill which differed slightly from the one under discussion by permitting immigrants who arrived later to benefit, and by providing for six instead of five years of residence. It was not agreed to.⁷⁸

After the previous question had been called for on the bill and its amendments Goode of Virginia moved to lay it on the table. Yeas and nays were taken on the motion. They are recorded in Table V, found in the Appendix, and which shows most opposition to a vote on the measure coming from the Northeast and South. There were only three votes for postponement from the middle west and border states. The most united opposition was in the four older slave states of Virginia, North Carolina, South Carolina, and Georgia.⁷⁹

75. Cong. Globe, 33rd Cong., 1 Sess., p. 536.

76. Ibid., p. 545.

77. Ibid., p. 545.

78. Ibid., p. 547.

79. Ibid., p. 547. Appendix, p. 136.

When the main question was put, the yea and nay vote demanded by Clingman of North Carolina showed it was passed by 107 yeas against 72 nays.⁸⁰ The title was amended to read, "A bill to grant a homestead of one hundred sixty acres of the public lands to actual settlers."⁸¹

Examination of the vote on the bill in the House is interesting as well as instructive. From the six Middle Western States, including Ohio, Indiana, Illinois, Michigan, Wisconsin, and Iowa, there was a total of thirty-six votes cast and of these only one was cast against the bill, which was that of Smith Miller of Indiana. The Northeastern States of Pennsylvania, New York, Maine, Vermont, New Hampshire, Connecticut, Rhode Island, New Jersey, Delaware, and Massachusetts cast a total of sixty-seven votes. Of the sixty-seven votes cast thirty-eight were for the bill and twenty-nine against the bill. New Jersey was the only state of the group casting unanimous vote for the bill. Rhode Island cast two votes and of these two one was cast for and the other against the bill. The rest of the group divided their vote and in Pennsylvania and New York, the two states having the heaviest vote, the majority was cast for the bill, while Vermont and New Hampshire cast a unanimous vote against the bill and the rest cast a majority against the bill. Pennsylvania cast seventeen votes, and only two were

80. Cong. Globe, 33 Cong., 1 Sess., p. 549.

81. Ibid., p. 549.

against the bill, while New York cast twenty-two votes of which nine were against the bill.

In the Old South group we have the states of Virginia, Maryland, North Carolina, South Carolina, Georgia, Alabama, Florida, and Mississippi and Louisiana casting a total of forty-nine votes of which ten were in favor of the bill and thirty-nine against the bill. Of this group only North Carolina, South Carolina and Georgia cast a unanimous vote against the bill. Alabama was the only state casting a majority in favor of the bill.

In the Border group we have the six states of Kentucky, Tennessee, Missouri, Arkansas, and Texas, casting a total of twenty-five votes of which twenty-three were in favor of the bill and two against the bill. Of the two against the bill one was from Smyth of Texas and the other from Hill of Kentucky. All but Texas cast a majority for the bill. The complete analysis is found in Table V of the Appendix.⁸²

On December 6, 1853, Gwin of California gave notice in the Senate that he would at an early date thereafter ask leave to introduce the Homestead bill, which he did, to fulfill a pledge he had made to Senator Dodge of Iowa to help support the bill. He introduced the bill the next day and it was ordered to lie on the table after the first reading. Five days later he moved that the bill be referred to the Committee

⁸². Appendix, p. 136 .

on Public Lands which was agreed to.⁸³ Before the bill was referred to that committee Gwin pointed out the following differences between his bill and the one passed by the House at the last session. His gave the right of settlement upon the unsurveyed as well as the surveyed public lands, which would give the inhabitants of the new states and territories full benefits of the measure, as they would not have to wait for surveying. All mineral lands were excluded from its operation. It limited the time of occupation and cultivation to secure the title to three years instead of five. It also gave a quarter section not only to every citizen, but to all persons who had declared their intention to become citizens at the date of their settlement.⁸⁴ This bill was reported back from the committee with amendments by Walker and ordered to be printed on February 24, 1854.⁸⁵

On March 7, 1854, the Senate received a message from the House saying that they had passed a bill to grant a homestead of one hundred and sixty acres to actual settlers.⁸⁶ Walker moved that the bill be referred to the Committee on Public Lands.⁸⁷

Cass of Michigan urged a speedy and favorable report by the Senate with as little delay as possible. Two days later on the 9th of March the bill was reported from the committee

83. Cong. Globe, 33 Cong., 1 Sess., pp 5, 33.

84. Ibid., p. 33.

85. Ibid., p. 474.

86. Ibid., p. 553.

87. Ibid., p. 553.

without amendment and recommendation of passage.⁸⁸ After this the Senate considered the House bill instead of the measure introduced by Gwin. Consideration in Committee of the Whole was started on April 18.⁸⁹ On the next day Wade of Ohio offered one of the most interesting amendments to the bill, which would extend the benefit to foreigners entering this country after its passage.⁹⁰ This led to objections from Adams of Mississippi and Thompson of Kentucky.⁹¹ Clayton of Delaware made an unsuccessful attempt to strike out the same section and insert one providing for a grant of \$160 from the Treasury in lieu of 160 acres of land to any mechanic or other citizen of age not engaged in agriculture.⁹² The objection to grants to aliens came largely from Southern members, viz: Adams of Mississippi, Butler of South Carolina, Clay of Alabama, Pratt of Maryland. Near the end of the session Wade withdrew his amendment because he thought it might endanger the passage of the bill.⁹³

Many motions were offered to delay and defeat the measure. Brown of Mississippi again moved his permanent occupancy bill as a substitute.⁹⁴ The friends looked upon the many motions to postpone as excuses to defeat it. One reason given for postponement was that the President had vetoed a bill granting

88. Cong. Globe, 33 Cong., p. 580.

89. Ibid., p. 930.

90. Ibid., p. 944.

91. Ibid., p. 944.

92. Ibid., p. 1661.

93. Ibid., p. 1661.

94. Ibid., p. 949.

public lands for the support of hospitals for the insane. Bradhead of Pennsylvania wanted the homestead bill postponed until that veto message was considered for he believed it involved the same principles.⁹⁵ Stephen Mallory of Florida expressed the same view.⁹⁶ Johnson of Arkansas was very frank in stating his reason. He had supported the earlier free land bills but said he would now vote against the measure. He wanted to delay until the passage of the Kansas-Nebraska bill. Since his speech is as outspoken statement of Southern position a portion is quoted below.

I was formerly a friend of the homestead measure. I should now vote against it, if it were forced. Because at this time it is tinctured to a degree, from its inevitable effects, and under the peculiar circumstances, so strongly with abolitionism, that I cannot, for one, bring myself as a representative on this floor from the South, for one moment to think of permitting it to pass this body, and become a law....Here are the facts as I find them. The Government is extinguishing titles to lands that lie west of Missouri and Iowa. When the rights of the Indians are extinguished, and they are removed, all that country becomes open to settlement, and the people will remove into it with or without an organized government. Yet it is a fact that the Missouri restriction exists there at this time, and that our southern people cannot go there for that reason, even if they desired to do so. If you pass the Homestead bill in the face of these facts, you bid a premium to all the balance of the world to fill up and settle that country, only excluding my constituency. If then you reject or delay the passage of the territorial bills for two or three years, you settle the question involved in those territorial bills practically, and by a law which has a higher force than the enactment of the Wilmot Proviso itself.

95. Cong. Globe, 33 Cong., 1 Sess., p. 1125.

96. Ibid., p. 1126.

I do not consider, or believe, that any man who is from the South, can conscientiously come forward and support that measure, at least, until the Kansas and Nebraska bills shall have been passed, and the whole country shall have become open to settlement by the whole people of the United States. Am I right or am I wrong? You are wrong, may say the man who wishes to exclude every Southerner; but you are right, I think would say every candid man, if you shall ever wish to go to those territories on equal terms under the laws of your country. This is a very adroit way by which we may be excluded from these territories. Not that all, or many, of the old advocates of the Homestead bill have in view such a result as this--by no means; but there are many of its present advocates that rejoice in the bill for this very feature; and if those advocates shall secure its passage now, and can successfully resist the territorial bills, even by adroitness and unfairness, which it is openly proclaimed will and shall be used, so as to defeat, or at any rate to delay, the same for two or three years, they will practically and effectually; and they feel and know it, have effected their great and most highly cherished object. It is absurd and even pitiful to ask any member of this Congress who represents a Southern constituency to do a thing like this. I do not think it even conveys a consideration of passing respect for his intelligence or his honesty to his own people, to attempt to argue him to a step like this. Now, sir, if gentlemen wish to give their votes on the homestead bill so anxiously, and that purely with a desire to give homes to the homeless, and not with a wish to use the measure as a political engine, let them bear with this thing with a little patience, and allow us to know what is to be the course of events affecting our rights in collateral matters.⁹⁷

Gwin reminded him that there were no lands subject to private entry in Kansas and Nebraska and that there was no prospect of survey there for years to come.⁹⁸

When the bill was again up for discussion an attempt was made by Brodhead of Pennsylvania to have it postponed till

97. Cong. Globe, 33 Cong., 1 Sess., pp. 1125-1126.

98. Ibid., p. 1126.

December next, which motion failed by a vote of eighteen yeas and thirty-two nays.⁹⁹

There were motions to amend almost without number. Only those which provoked considerable debate along new lines or favored other policies will be mentioned. Brown of Mississippi offered a substitute which was a combination of extending pre-emption for ten years, and the right to purchase at graduated prices. He argued this would really provide homes for the poor, and would not establish any new and untried policy.¹⁰⁰ Dixon of Kentucky offered an amendment to limit Section 6 to free white persons who had declared their intention. It was approved, because several northern men voted for it thinking that might gain votes for the bill.¹⁰¹ It was also amended so native born Americans could enter before they were twenty-one years of age and receive a patent after they were of age. Stuart of Michigan, Gwin of California, and Brodhead of Pennsylvania offered amendments to change entering free of cost to entering by paying nominal prices.¹⁰² Bell of Tennessee, Benjamin of Louisiana spoke at length against, while Weller of California and Cass of Michigan defended the main bill.¹⁰³

99. Cong. Globe, 33 Cong., 1 Sess., p. 1662.

100. Ibid., pp. 1718-1719.

101. Ibid., p. 1742.

102. Ibid., pp. 1770, 1791.

103. Ibid., pp. 1775, Appendix, pp. 1071-1074, 1090-1091, 1087-1090.

On July 19, 1854, Clayton moved as a test vote that the bill be laid on the table. The vote was twenty-four yeas to twenty-seven nays. The result shows opposition came from the Northeast and South, the yea votes being distributed as follows:

Maine	1
New Hampshire	1
Vermont	1
Connecticut	1
New York	1
Pennsylvania	1
Delaware	2
Maryland	2
Virginia	2
North Carolina	1
South Carolina	2
Georgia	2
Florida	1
Alabama	2
Louisiana	1
Texas	1
Kentucky	2
	<u>24</u> yeas ¹⁰⁴

On July 20 an attempt was again made to postpone the measure. Its friends objected saying that would mean all the speeches would be repeated in the next session. More substitutes and amendments were offered when postponement failed.¹⁰⁵

On July 10 a new bill had been introduced by Hunter of Virginia as a means of dodging the issue. It was called a "bill to graduate the price of the public lands and for other purposes." He asked that it lie on the table for he knew the Committee on Public Lands favored a real homestead bill.¹⁰⁶ A

¹⁰⁴. Cong. Globe, 33 Cong., 1 Sess., p. 1816.

¹⁰⁵. Ibid., pp. 1832, Appendix pp. 1097-1122.

¹⁰⁶. Ibid., p. 1658.

week later Stuart of Michigan, who had been a supporter of homesteads, offered Hunter's bill as a substitute for the homestead, and became an advocate of it.¹⁰⁷

On July 20 several minor amendments were made and many more attempted to be made to Hunter's substitute.¹⁰⁸ As amended the bill provided for a graduated price ranging from one dollar per acre for lands on the market for five years to twelve and one-half cents per acre for those in market thirty years. The states might pre-empt lands at graduated prices for purposes other than railroads and canals, and they might fix prices above the graduated prices and keep the excess. If a state chartered a railway or canal through the public lands, and the state legislature applied to the Secretary of the Interior, it became his duty to set aside 7,680 acres per mile of railway or canal within twelve miles of each side of and near the route, at the reduced prices. Free whites over twenty-one years of age, or heads of families, were allowed to enter one hundred sixty acres of land subject to private entry, and after five years' residence might purchase it at twenty-five cents per acre, or if the land had been in the market over twenty years, at twelve and one-half cents per acre. Actual settlers might purchase the quarter section so entered at any time during the five years at the regular graduated price.¹⁰⁹ The full text of the measure

107. Cong. Globe, 33 Cong., 1 Sess., p. 1770.

108. Ibid., Appendix, pp., 1185-1114.

109. Ibid., Appendix, pp. 1122-1123.

is found in the Appendix.¹¹⁰ When the question was taken on Hunter's substitute it was agreed to by a vote of thirty-four to thirteen.¹¹¹ On the passage of the bill as amended the vote was thirty-six to eleven so the bill passed.¹¹² Both votes are recorded in Table VI. in the Appendix.¹¹³

The vote by sections of the bill itself is interesting. The Middle West cast a total vote of eleven of which not a single vote was against the bill. The Northeast cast a total of eleven votes of which six were in favor of the bill and five were against it. Maine, Vermont, Massachusetts, Connecticut, and New York each cast one vote against the bill. Maine, Massachusetts, Connecticut, Rhode Island, Pennsylvania, and New Jersey each cast one vote for the bill. The Old South cast a total of fifteen votes, eleven of which were in favor of the bill and four against it, two of the latter coming from Maryland and one from each of the states of North Carolina and Georgia. Virginia, South Carolina, Alabama and Mississippi were the states casting two votes in favor of the bill. In the border states we have a total of eight votes cast of which six were in favor of the bill. Tennessee was the only state voting against the bill and it voted unanimously against it. Kentucky had no vote, while Missouri, Arkansas and Texas each cast two votes in favor of the bill, and Louisiana cast one vote which was in favor of the

110. Appendix, p. 146 .

111. Cong. Globe, 33 Cong., 1 Sess., Appendix, p. 1122.

112. Ibid., p. 1844.

113. Appendix, p. 137 .

bill. The far west represented only by California voted for the measure.

Thus Hunter's substitute providing for a graduated price replaced the homestead bill and many of the homestead supporters voted for it as they believed it was the best they could get. This opinion was expressed by Chase of Ohio¹¹³ and by Dodge of Iowa when the amendment was being voted upon.¹¹⁴ Others felt it was satisfactory as it gave what the West wanted. Shields of Illinois said he abandoned the homestead, a favorite measure with the West, when he considered it was lost, and fell back on the substitute which was the same as a bill he had recommended when he was at the head of the General Land Office in 1845.¹¹⁵ Stephen A. Douglas of Illinois expressed complete satisfaction with the substitute, saying it gave the West homesteads and graduation, both of which they desired, and he believed it would meet with approval in the House.¹¹⁶

On the motion of Brodhead the title of the bill became, "An act to reduce and graduate the price of the public lands to purchasers and actual settlers, and to grant the right of pre-emption in certain cases."¹¹⁷

On July 25, 1854, the House received the message that the Senate had passed the homestead bill with amendments.¹¹⁸

113. Cong. Globe, 33 Cong., 1 Sess., p. 1843.

114. Ibid., Appendix, p. 1122.

115. Ibid., p. 1843.

116. Ibid., p. 1843.

117. Ibid., pp. 1843-1844.

118. Ibid., p. 1913.

Three unsuccessful attempts were made to have other bills postponed or rules suspended, one on July 31 by Disney of Ohio, another on August 2 by Phillips of Missouri, and still another on August 3, by Dawson of Pennsylvania.¹¹⁹

No action was taken on the bill in the second session, although there was some discussion of homesteads. When an amendment to the bill passed August 4, 1854 to graduate prices of land was being considered, on January 3, 1855, Dawson of Pennsylvania submitted an amendment offered by Jones of Tennessee which had the provisions of the old homestead bill except that entrants should pay the nominal price of fourteen and one-half cents per acre for land.¹²⁰ Six days later Dawson spoke on homesteads and the Senate substitute which he said would benefit the states, railroads and speculators, and not settlers because the section providing for the settler was mere mockery. He answered the objections made to homestead bills, both constitutional and economic, and prophesied such a measure would still become law for the people demanded it. He said:

"A combination of untoward circumstances, quite unconnected with the merits of the homestead, have for a time interfered to prevent its passage by the Senate; but the 'still small voice' of the people, speaking in the calm majesty of might and justice, is already rising above the jar of sectional and partisan interests, and insisting upon the adoption into the legal policy of the country of this, their favorite measure."¹²¹

119. Cong. Globe, 33 Cong., 1 Sess., p. 2024, 2071, 2104.

120. Cong. Globe, 33 Cong., 2 Sess., pp. 175-176.

121. Ibid., pp. 219-223.

In the Thirty-fourth Congress only Galusha Grow of Pennsylvania made an attempt to secure free land for settlers in the West. On February 7, 1856, he gave notice of two bills, one a homestead bill, and a second one to prevent further sales except to actual settlers.¹²² On February 18, the homestead bill was introduced, given its first and second reading and referred to the Committee on Agriculture of which he himself was a member.¹²³ It was reported from the committee nine days later, and referred to Committee of the Whole, from which Grow tried unsuccessfully to have it reported on August 4, 1856.¹²⁴

122. Cong. Globe, 34 Cong., 1 Sess., p. 381.

123. Ibid., p. 441.

124. Ibid., pp. 521, 1915.

Chapter IV

HOMESTEAD LEGISLATION AFTER 1857

When the Thirty-fifth Congress assembled the homestead discussion was resumed in earnest. It remained one of the important issues until the outbreak of the Civil War. As the antagonism between the North and South increased the opponents of the homestead principle became more determined in their efforts to defeat it. Andrew Johnson was again in Congress, now a Senator from Tennessee, and resumed his championship of the struggle for free land for settlers.

In the Thirty-fifth Congress there were two homestead bills introduced in each house during the first session. Solomon Foot of Vermont introduced one in the Senate on December 17, 1857. It never came up for debate or consideration.¹ On December 22 Andrew Johnson introduced one with a title similar to his previous bills, which was referred to the Committee on Public Lands.² A month later Johnson reported it back from committee and it was made a special order for the first Monday in February.³ It was postponed many times but finally came up for consideration on May 19, 1858. At that time several amendments were offered, the most important ones being suggested by Andrew Johnson himself. One change would permit all those who were

1. Cong. Globe, 35 Cong., 1 Sess., p. 62.

2. Ibid., p. 135.

3. Ibid., p. 354.

over twenty-one years of age to take land, instead of limiting the right to the heads of families. Another fixed the period of occupancy before the patent could be granted at five years. A third provided that the land should revert to the government if the person settling on it should abandon his tract for more than six months. Johnson said these amendments had been approved by the commissioner of the General Land Office.⁴

Collamer of Vermont offered an amendment to strike out the clause which limited the entering of land to those who were citizens of the United States at the time of the passage of the act. The purpose was to permit future immigrants to benefit by the proposed legislation. That amendment was approved.⁵

Mason of Virginia sought to delay legislation by moving that the bill be passed over and printed. Clingman of North Carolina used a different weapon in his efforts to defeat it. He offered an amendment to change the first section so it would read:

Any person who is the head of a family and a citizen of the United States, shall be entitled to have issued to him or her by the Commissioner of the Public Lands a warrant for 160 acres of land to be located in the same manner in which bounty land warrants heretofore issued have been located on any of the public lands of the United States subject to entry, the applicant being required to make proof in support of his claim in such manner and under such regulations as may be prescribed by the Secretary of the Interior.⁶

4. Cong. Globe, 35 Cong., 1 Sess., p. 2239.

5. Ibid., p. 2239.

6. Ibid., p. 2240.

In presenting this amendment Clingman gave several reasons for opposing the homestead policy. He objected to giving away the public domain when the government was in straightened circumstances, but if it was to be given away he wanted an equitable division. Because he believed not even one in twenty would emigrate from his own state he suggested granting warrants which would benefit all classes and sections and result in fewer moving away from the old states.

Pugh of Ohio replied to Clingman by saying the Homestead bill did not propose the giving of land as a gratuity, but as a return for working it for five years and so increasing its value. He reminded the members of the increased indirect income through the greater purchase of taxed imported articles by the settlers.⁷

The next day Andrew Johnson explained the sections of the bill and made a speech in its support. The four outstanding features of the bill were: that it permitted heads of families to enter land and receive patents if they settled on land and cultivated it for five years, that it allowed those who were not citizens to take advantage if they became naturalized in five years, and that it confined the entries to alternate sections of the land then in market. Johnson refuted the

⁷. Cong. Globe, 35 Cong., 1 Sess., p. 2240.

statement that the bill was the work of the Emigrant Aid Society and was designed to injure the South. He cited bills for granting lands to settlers which had been made before that society was organized. He defended the power of Congress to dispose of the land, and expressed his opinion that it was just as legal to grant land to those who raised food to sustain an army as to the soldiers who had fought in it.⁸

Johnson opposed Clingman's amendment for he believed the warrants would be sold to speculators for low prices and this would stop the sale of government lands and result in decreased revenue. His own bill provided for granting only alternate sections and he believed settlement on those would increase the value of the remaining land. He believed the proposed land policy would decrease pauperism and prevent greater accumulation of city dwellers in the future. He thought the homesteaders would defend the frontiers so effectively that garrisons would be unnecessary. Since the public lands had paid for themselves and brought an additional \$92,000,000 to the Treasury he saw no reason for objections to grants, especially since there were 1,107,297,000 acres of unsold lands in 1856. He said he could not understand why there should be more scruples about the passage of this bill, than the enactment of those making grants to railroads, or ceding swamp lands to the

8. Cong. Globe, 35 Cong., 1 Sess., p. 2266.

states. He believed it would be economical for people of the southern states to enter the lands there even if the quality was inferior for the money otherwise used to purchase lands could be spent for improvement of the tracts. He denied that slavery trouble would be aggravated for he believed land owners would be very anxious to preserve a government which would protect their property.⁹

Two days later when the Senate resumed consideration of the bill the pending question was still on Clingman's amendment. Clingman maintained that the homestead policy would reduce income from lands as the alternate sections would not increase in value sufficiently to compensate for those given away. He felt certain this would necessitate higher tariffs. He believed there would be a demand for refunds from those settlers who had previously paid for their lands. If lands were to be given away he wanted impartial distribution which was the aim of his amendment.¹⁰

Several Senators took the floor in favor of the bill, among them Doolittle of Wisconsin and Sam Houston of Texas. The latter objected to Clingman's amendment because it would encourage speculation.¹¹

Clingman attempted to defeat the bill by protracted discussion for he made such suggestions as extending the benefit

9. Cong. Globe, 35 Cong., 1 Sess., p. 2266-2267.
10. Ibid., p. 2303-2304.
11. Ibid., p. 2304-2305.

by granting warrants to mechanics, soldiers and sailors in the service. All Andrew Johnson could do was to point out that such classes were provided for by his bill if they were heads of families.¹²

Ried of North Carolina took up the cause of the opponents, reviewing such old arguments as decrease in revenue, unfairness to the old states, and the encouragement of dependence upon the government. Because many of the lands had been purchased he considered grants of land were equivalent to grants of money. He expressed his approval of land grants or land warrant grants to soldiers because such a policy encouraged enlistment when the country needed men for service.¹³

Ried was followed by John Crittenden of Kentucky who said he thought the bill was good in theory, but that it would be found to have many practical shortcomings. He did not believe putting the idle on farms would convert them into good citizens. He also thought many of the ambitious would consider the five year tenure period too high a price to pay for the grants. He did not approve of the undue encouragement it would give to westward migration. He maintained the new policy should not be necessary when lands could be bought for as little as $12\frac{1}{2}$ ¢ per acre. He was in favor of selling the lands and distributing the proceeds among the states.¹⁴

12. Cong. Globe, 35 Cong., 1 Sess., p. 2306-2307.

13. Ibid., p. 2306-2307.

14. Ibid., p. 2306-2307.

Charles Durkee of Wisconsin supported the bill, saying he believed it was the business of statesmen to encourage the settlement of the new territories so they could become states. He held that the labor of the settlers in subduing the new regions paid for the lands.¹⁵ Following this speech the Senate adjourned, but the Homestead bill was made a special order for May 27.¹⁶

On May 27 Clingman moved to postpone the bill until January of the next session, and Thompson of Kentucky and Clay of Alabama spoke in favor of such action. Andrew Johnson of Tennessee objected, saying members should be familiar with the question since it had been considered regularly since 1846 and in this session since its beginning. He thought the country demanded the measure because the bill had twice been passed by the House. State legislatures had passed resolutions favoring it, and public meetings throughout the country were endorsing it. The motion for postponement was carried by a vote of 30 to 22.¹⁷

During this same session of the Thirty-fifth Congress Galusha Grow of Pennsylvania gave notice in the House of Representatives of a homestead bill on December 9, 1857, which bill was introduced on January 4 and referred to the Committee on Public Lands.¹⁸ Two weeks later he introduced another

15. Cong. Globe, 35 Cong., 1 Sess., p. 2308.

16. Ibid., p. 2308.

17. Ibid., pp. 2424-2425.

18. Ibid., p. 181.

measure which would prevent the sale of lands until they had been surveyed for fifteen years. This would give the settlers a fifteen year start on speculators. This bill was referred to the same committee.¹⁹

On January 18 John Kelly of New York introduced another homestead measure, which was referred to the Committee on Agriculture, but this bill died in committee.²⁰ Still another measure was introduced on March 15, 1858 by Augustus Wright of Georgia, and was referred to the Committee on Public Lands, but was not reported.²¹ We do not find among the membership of either committee at this time any of the earlier champions of the homestead principle. On the Committee on Public Lands there were Cobb of Alabama, McQueen of South Carolina, Ruffin of North Carolina, Hill of Georgia, Bennett of New York, Davis of Indiana, Walbridge of Michigan, Montgomery of Pennsylvania, and McKibbin of California. The Committee of Agriculture was composed of Whiteley of Delaware, Hall of Ohio, Kelsey of New York, Morrill of Vermont, Huyler of New Jersey, Mott of Ohio, Foley of Indiana, Gillis of Pennsylvania and Bryan of Texas.²²

19. Cong. Globe, 35 Cong., 1 Sess., p. 324.

20. Ibid., p. 324. His speech in defense of the measure was printed in the Globe. He outlined the history of the land policies, and reviewed arguments for the proposed change. He believed the encouragement of agricultural life would decrease our death rate. (Appendix, p. 432.)

21. Ibid., p. 1130.

22. Cong. Globe, 35 Cong., 2 Sess., p. 31.

In the second session of the Thirty-fifth Congress Ferguson, the delegate from the Territory of Nebraska, introduced a homestead bill which was referred to the Committee on Public Lands, and reported by the committee on January 26, 1859.²³ It was the Grow bill of the previous session so its provisions were familiar to the members of the House. After being read in full it was voted on without debate, and was passed receiving 120 yeas and 76 nays. The vote shows there was now both party and sectional division on the measure. Only three southerners voted for it, and only one Republican against it. The Northern Democrats divided, but only a few of them voted against it. The full analysis of the vote is found in Table VIII of the Appendix.²⁴

The main features of the bill were:

- 1) Any person who was the head of a family or twenty-one years of age could file on a quarter section of land, provided he were a citizen of the United States, or had filed his declaration of intention.
- 2) Unappropriated public lands which were surveyed and open to private entry could be taken.
- 3) The settler must reside on and cultivate the land for five years.
- 4) Lands so secured were not liable for the satisfaction of

²³ Cong. Globe, 35 Cong., 2 Sess., p. 201.

²⁴ Ibid., p. 727. Party designations from Tribune Almanac for 1858, p. 17. Appendix p. for analysis.

debts contracted prior to the time of securing the patent.

5) Lands entered would revert to the government if the settler abandoned them for more than six months during any time within the five year period.²⁵

Opposition in the Senate was greater for the Democratic majority was larger and the proportion of southern members was also greater.²⁶ The Senate received the bill from the House on February 1, 1859 and the next day it was read and referred to the Committee on Public Lands on the motion of Andrew Johnson.²⁷ It was reported back two days later and came up for debate on February 17.²⁸ Through the efforts of such southern men as Slidell of Louisiana, Reid of North Carolina, and Hunter of Virginia the Senate voted 28 to 28 to postpone the measure in favor of an appropriation bill, and the affirmative vote of Vice President Breckinridge carried the motion. Wade of Ohio, Shields of Minnesota, Wilson of Massachusetts, Allen of Rhode Island, and Andrew Johnson asked that a vote be taken without debate, but that was exactly what southerners wanted to avoid. The vote was sectional

25. Cong. Globe, 35 Cong., 2 Sess., p. 726. The full text of the bill is found in the Appendix, p. 48.

26. The Senate consisted of twenty Republicans, thirty-nine Democrats, and five Americans. (Tribune Almanac, 1859, p. 16.)

27. Cong. Globe, 35 Cong., 2 Sess., p. 712.

28. Ibid., pp. 731, 805.

only three negative votes being from the South and five affirmative ones from the North.²⁹ The Committee on Public Lands had been discharged from consideration of the Senate bill on homesteads referred to it during the previous session.³⁰

On the 6th of March, 1860 Owen Lovejoy of Illinois reported a homestead bill to the house from the Committee on Public Lands. The only difference between his bill and the Grow bill of the last session was the description of the land which could be entered. The new one permitted a homesteader to enter 160 acres upon which he had previously filed a preemption claim, or which was subject to sale at \$1.25 per acre. If he preferred he might enter 80 acres subject to sale at \$2.50 per acre.³¹ When the bill was referred to the Committee of the Whole Lovejoy moved to reconsider the vote, and the measure was called up on March 12. Branch of North Carolina moved to table the bill, but failed by a vote of 62 to 112. The bill was read a third time and voted on, and passed with a vote of 115 to 65. All the yea votes were from free states except that of James Craig of Missouri, and all the nay votes were from slave states except that of Montgomery (Democrat) of Pennsylvania.³² A full analysis is found in Table VIII of the Appendix.³³

29. Cong. Globe, 35 Cong., 2 Sess., p. 1076.

30. Ibid., p. 119.

31. Cong. Globe, 36 Cong., 1 Sess., p. 1014. Full text in Appendix, p. 150.

32. Ibid., p. 1115.

33. Appendix p. 139.

In the meanwhile Andrew Johnson had introduced a homestead measure in the Senate, which had been referred to the Committee on Public Lands, and reported back with amendments on February 24.³⁴ It was made a special order for the following Thursday, but did not come up until May 19, when Clingman again offered his amendment to grant warrants in lieu of lands. The bill was supported and explained by A. O. Nicholson of Tennessee, Johnson's colleague. The provisions were similar to Johnson's earlier bills. It limited occupancy to odd numbered sections of land subject to private entry, and extended the benefit to those who had declared their intention to become citizens.³⁵

The House bill was now before the Senate, so much of the discussion centered around the question of which should be voted upon. Nicholson expressed his preference for the Senate bill as it limited entries to odd numbered sections. He argued the homestead policy would not reduce the revenue and that the emigration from the East would benefit the workers who remained there. He believed Congress had authority to dispose of the lands, and supported his belief on the clause of the Constitution which gave Congress power to establish new states. He

34. Cong. Globe, 36 Cong., 1 Sess., p. 190, 847.

35. Ibid., p. 1508. The full text is given in the Appendix, p. .

quoted from the opinion stated by the Chief Justice in the Dred Scott decision as follows:

"The power to expand the territory of the United States by the admission of new states is plainly given, and in the construction of this power by all the departments of the government it has been held to authorize the acquisition of the territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a state, and not to be held as colony and governed by Congress with absolute authority; and as the propriety of admitting a new state is committed to the sound discretion of Congress with absolute authority, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a state upon an equal footing with the other states, must rest upon the same discretion."³⁶

He believed this supported his view that the lands were acquired for the purpose of creating new states, and he was inclined to think the homestead policy was the best means to encourage settlement in preparation for statehood. The major portion of his speech was devoted to a resume of the familiar arguments for the policy. He admitted most of those who settled in this region would be against slavery, and that new states would be free states, but he believed the results would be the same under existing laws. Though he himself was from a slave state and favored slavery he said, "I can't decline to discharge a duty because a political organization manifests hostility to an institution essential to southern interests. Sectional antagonism must end soon or southern states will be constrained to adopt effectual measures of resistance and re-

36. Cong. Globe, 36 Cong., 1 Sess., p. 1221.

dress."³⁷ If sectionalism did end he thought the homestead policy would have a strengthening influence on the government, and if it did not end resistance would be necessary before enough time had elapsed to form new states. He believed settlement of the West would have a tendency to reduce sectionalism since it would remove many people from the influence of agitators in the large cities of the East.

On March 22 Andrew Johnson reported on the House bill from the Committee on Public Lands. The proposal of the committee was to strike out all after the enacting clause and substitute the Senate bill.³⁸ The discussion was therefore resumed on the Senate bill, and the pending question was on Clingman's amendment. Clingman repeated his arguments against the bill. John Hale of New Hampshire said he favored it because it was the only way any one from the old states could benefit by the lands, since grants for agricultural colleges and grants for the support of the indigent insane had both been refused. Now at least those who cared to emigrate could get homes and a market might be furnished for manufactured products.³⁹ Benjamin Wade of Ohio favored the House bill and outlined the differences between the two measures. The House bill permitted anyone who would declare his intention to become a citizen to obtain land, while the

37. Cong. Globe, 36 Cong., 1 Sess., pp. 1219-1223.

38. Ibid., p. 1292.

39. Ibid., p. 1295.

Senate bill limited the benefits to those who were already inhabitants of the United States. The House bill also permitted any one who was twenty-one years of age to enter, while the Senate bill confined the privilege to heads of families. The House bill permitted entry on any lands subject to preemption, while the Senate bill confined entries to land subject to private entry. The House bill was not confined to alternate sections as was the Senate bill.⁴⁰

Louis Wigfall of Texas occupied the remainder of the time that day by a speech half in earnest and half in jest evidently given for the purpose of consuming time. He objected to the measure on the ground of constitutionality, but defended railroad grants which he said made provisions for mail contracts. He suggested that if the government were to be an eleemosynary institution it should not force men to work but should supply each homesteader with a negro man, woman, and child.⁴¹

On April 3 Wade moved to substitute the House bill for the Senate bill and the motion was carried by a 26 to 24 vote following considerable discussion on the merits of the two bills. Graham Fitch of Indiana offered an amendment to confine entries to alternate sections and raise the price of the reserved sections to twice the minimum price. The amendment provided further that the provisions of the act should be applicable only

40. Cong. Globe, 36 Cong., 1 Sess., p. 1296.

41. Ibid., p. 1304.

to land subject to private entry at the time of the passage of the measure. He explained the purpose of the last provision was to prevent the pushing of the frontier into the Indian country making more purchases necessary.⁴²

Morton Wilkinson of Minnesota spoke in favor of the House bill, pointing out four of its points of superiority. It permitted unmarried men to enter land, and he did not consider the frontier a suitable residence for women and children. It permitted foreigners who had declared intention to become citizens to enter, and they were improving the West by cultivating farms and building cities. It did not limit settlers to lands subject to private entry which would be a hardship in states like Minnesota. It did not reserve alternate sections, which was important if the settlers were to be able to build churches, roads and schools. He stated he would support the Senate bill if that was favorable to the majority members for he was very desirous of getting the homestead principle established.⁴³

On April 4 consideration of the House bill was resumed. George Pugh of Ohio spoke at length on homesteads especially in favor of the Senate bill. He believed the homestead bill would not interfere with the preemption law, but that it would reduce the speculation in land warrants. He preferred the grants in alternate sections for that had become the established

42. Cong. Globe, 36 Cong., 1 Sess., p. 1508.

43. Ibid., pp. 1508-1512.

policy of Congress. He challenged Wigfall of Texas to prove there was any more right to give lands to railroads than to settlers.⁴⁴

Wigfall replied by saying the railroad grants were given to encourage the establishment of mail routes, and provide a means for transporting an army and navy to various parts of the country. He pointed out that 160 acre tracts were of no use to slave holders. He predicted the measure would hasten the catastrophe of dissolving the union which had been prevented so far by the equality in the number of free and slave states. He believed its passage was an organized effort on the part of societies that wanted to do away with slavery.⁴⁵

On April 5 Fitch's amendment was rejected by a vote of 17 yeas to 28 nays after debate on the matter. Albert Brown of Mississippi offered another amendment which provided for permanent preemption. This was the same measure which he first introduced in the Thirty-second Congress. He gave the same arguments for it which had been given at that time and added that he believed that it would lessen crime on the frontier where much trouble was caused by disturbing the preemptors.⁴⁶

James Green of Missouri offered a substitute which was really an amendment of the preemption law to permit the settler

44. Cong. Globe, 36 Cong. 1 Sess., pp. 1526-1532.

45. Ibid., pp. 1535-1539.

46. Ibid., p. 1552.

to have two years in which to pay, and then be permitted to purchase less than a quarter section. He opposed the homestead measures because they provided for donations, would discourage railroad building by using up the lands, and would be unjust to soldiers holding land warrants.⁴⁷

On April 9, 1860 Doollittle of Wisconsin delivered a long speech in favor of homestead legislation reviewing the usual arguments of the supporters, adding that he thought a means of escape would be furnished for the poor whites of the South. He hoped it would encourage immigrants so the country would escape being Africanized.⁴⁸

Mason of Virginia maintained the homestead bill was a direct anti-slavery measure whose whole aim was to populate the northwest and create free states. He said the Republicans in the other house brought it up again and again as a means of creating free states, so they could obtain control of the government and take direct action on the slavery question. He believed the effort was sponsored by the Emigrant Aid Society.⁴⁹

Two days later Andrew Johnson withdrew his amendment for substituting the Senate bill for the House bill, and offered a new amendment as a substitute, differing in many respects from the original bill. The persons who made entries must have been

47. Cong. Globe, 36 Cong., 1 Sess., pp. 1552-1554.

48. Ibid., pp. 1629-1631.

49. Ibid., pp. 1634-1636.

actually settled on the land, and pay $12\frac{1}{2}\%$ per acre when receiving the patent. The land should revert to the government for abandonment, false statements, or the making of any agreement to sell or transfer the right. Odd sections only could be taken and even sections could be entered only at double the existing price. Settlers on surveyed lands, not previously offered for public sale, were to be given two years in which to pay for their tracts and those on unsurveyed lands two years after the surveys were made. Preemptors must have resided on the lands at least three months. Preemptors who entered under this plan could pay the minimum price and obtain a patent any time within five years.⁵⁰ Johnson made a speech in its favor and expressed the opinion it would be approved by President Buchanan.

Wigfall of Texas offered an amendment which would give the lands to the state in which they lay. The states were to sell the land at the graduated scale of prices, give the settler five years in which to pay, and turn in a part of the income to the national government.⁵¹ No action was taken on either of these amendments, for at this point the House bill, the Senate bill, and all the amendments were referred to the Committee on Public Lands.⁵²

On April 17 Andrew Johnson reported from the committee

50. Cong. Globe, 36 Cong., 1 Sess., pp. 1649-1670.

51. Ibid., p. 1656.

52. Ibid., p. 1662.

a new bill in lieu of those referred. Only the heads of families and citizens of the United States were permitted to enter. A payment of 25¢ an acre was required in order to cover the land office costs. Five years of residence were required as in most of the earlier measures. Only surveyed lands offered for public sale and subject to private entry could be taken. The lands were not liable for debts contracted prior to obtaining patent. Preemptors on surveyed lands should have two years in which to pay for their lands, and all public lands should be put into market two years after survey. Settlers could pay the regular price at any time within the five year period and get a patent. Lands which had been reduced to 12½¢ per acre and kept at that price for five years were to be ceded to the states. This was a compromise between the various demands which had been made.⁵³

Gwin of California attempted to amend the measure so as to permit citizens and aliens who had declared their intention to occupy mineral lands in California and Oregon. The amendment was lost when it came to a vote two days later.⁵⁴

Bayard of Delaware expressed the opinion that Johnson's amendment was the least objectionable of the homestead bills, but that he preferred giving the lands to the states.⁵⁵ Minor

53. Cong. Globe, 36 Cong., 1 Sess., pp. 1748-1749.

54. Ibid., pp. 1754-55, 1770-1777, 1795.

55. Ibid., p. 1777-1779.

56. Ibid., p. 1795.

amendments in the wording were offered and agreed to.⁵⁶ The suggestion of John Crittenden of Kentucky to limit the benefit to those who were residents of state or territory at the time of the passage of the bill, with the purpose of excluding foreigners was rejected.⁵⁷

The Homestead Bill was not up for discussion again until May 9, 1860. On that day Grimes of Iowa offered an amendment which would permit all over twenty-one to take land whether or not they were heads of families. Wilkinson of Minnesota supported him, but the amendment was rejected by a vote of 27 yeas to 28 nays.⁵⁸ Wade had refused to withdraw his amendment to substitute the House bill. The two measures were again summarized by Harlan of Iowa who said he preferred the House bill, but when the amendment came to vote it was rejected 26 to 31.⁵⁹ Section 2 which provided for giving the lands to the states after thirty-five years was amended to change the time to thirty years.⁶⁰ The amendment of Wilkinson of Minnesota to permit entry of 80 acre tracts of other lands than those subject to private entry was agreed to in Committee of the Whole, but was rejected by the Senate.⁶¹

57. Cong. Globe, 36 Cong., 1 Sess., pp. 1801-1802.

58. Ibid., pp. 1991-1996.

59. Ibid., p. 1999.

60. Ibid., p. 2001.

61. Ibid., pp. 2001, 2005.

On May 10, 1860 the Senate bill in its amended form was given a third reading and passed by a vote of 44 yeas to 8 nays. The eight nay votes were cast by Bragg of North Carolina, Clingman of North Carolina, Hamlin of Maine, Hunter of Virginia, Mason of Virginia, Pearce of Maryland, Powell of Kentucky, and Toombs of Georgia. All the opposition had come from the slaveholding South who feared new states, and the northeast who feared loss of population.⁶²

Not all of those who voted for it were satisfied, but they felt it was the best they could get. Wilkinson expressed the opinion that it would not meet the expectations of the people.⁶³

The Senate bill reached the House on May 11, 1860, and a week later it was referred to the Committee on Public Lands. On May 21 Lovejoy reported it, and the House voted 103 to 59 to substitute its own bill for the Senate bill sent to it.⁶⁴

The amendment of the House was disagreed to in the Senate by a vote of 29 to 20 so a conference committee was chosen consisting of Galusha Grow of Pennsylvania, James Thomas of Tennessee, and Owen Lovejoy of Illinois from the House of Representatives, and Andrew Johnson of Tennessee, Robert Johnson of Arkansas, and James Harlan of Iowa from the Senate.⁶⁵

62. Cong. Globe, 36 Cong., 1 Sess, p. 2043.

63. Ibid., p. 2042-2044.

64. Ibid., pp. 2066, 2199, 2221-2222.

65. Ibid., p. 2462.

On June 11 Andrew Johnson reported that this committee had separated without coming to an agreement.⁶⁶ Both houses insisted on their own measures so a second conference committee was appointed consisting of Schyler Colfax of Indiana, Jabez Curry of Alabama, and Cyrus Aldrich of Minnesota for the House of Representatives, and Andrew Johnson of Tennessee, James Doolittle of Wisconsin, and Albert Brown of Mississippi for the Senate.⁶⁷ This committee also separated and a third one consisting of Schuyler Colfax of Indiana, Muscoe Garnett of Virginia, and William Windom of Minnesota from the House and Andrew Johnson of Tennessee, Benjamin Fitzpatrick of Alabama, and Simon Cameron of Pennsylvania from the Senate.⁶⁸

After twelve meetings this committee agreed to a measure which was considered by both houses. Its main provisions were:

1. The benefits of the bill could be had by any person who was the head of a family and a citizen of the United States or had declared his intention to become one, provided he had made no previous entry under the act and was a settler on the quarter section he entered.
2. The settler had to reside on and cultivate the land for five years, erect a dwelling house thereon, and pay 25¢ per acre when obtaining a patent.

66. Cong. Globe, 36 Cong., 1 Sess., p. 2814.

67. Ibid., p. 2862.

68. Ibid., p. 3034.

3. The land which could be entered for homesteads was limited to a quarter section of vacant, unappropriated, surveyed public land which was not included in any preemption claim made before the passage of the act. Only odd numbered sections could be taken.

4. Lands were not liable for the satisfaction of debts till patents had been issued.

5. Lands would revert to the government in case of abandonment, perjury, or the sale of the right.

6. Preemptors on surveyed lands would have two years in which to pay for lands, and those on unsurveyed lands two years after the survey.

7. All persons who were preemptors at the time of the passage of the act could acquire title to their land for half the regular price if they paid for it within two years.

8. Any person who settled on land could acquire title after six months of residence if they paid the regular price.

9. Lands remaining unsold after being open to private entry for thirty years should be ceded to the states in which they lay.⁶⁹

The bill was approved in the House by a vote of 115 to 51, the nays all being from slave states.⁷⁰ In the Senate the vote was 36 to 2, the two nay votes being cast by Bragg of

69. Cong. Globe, 36 Cong., 1 Sess., p. 3178. Full text is in the Appendix p. 155.

70. Ibid., p. 3178.

North Carolina and Pearce of Maryland.⁷¹ This was the first time a homestead bill had passed both houses.

On June 23, 1860 President Buchanan returned the bill to the Senate with his veto message, which contained ten reasons for his action on the bill. He believed Congress had no power to give away the public lands, and thought the bill unjustly discriminating because the new settlers were being permitted to take land so much cheaper than those who had previously paid \$1.25 per acre. He argued it made land warrants held by soldiers valueless, and discriminated in favor of the cultivators of the soil. He said the old states would be "deprived of their share of the value of the land--and they would lose through loss of population and a decrease in the value of their own land." The President thought speculators would bargain with homesteaders to take land on shares, and he believed the bill favored foreigners for the first section read "head of a family and a citizen of the United States," while section five which placed those who had made their declaration of intention on the same footing, failed to repeat the expression "who is the head of a family." He interpreted this to mean that the second class need not be heads of families. He believed there was unjust favoritism for settlers now on the surveyed lands now offered who could enter for 25¢ per acre while those on the unsurveyed lands could enter for \$1.25 within two years after the survey. He said the

⁷¹ Cong. Globe, 36 Cong., 1 Sess., p. 3159.

government would lose much revenue, and destroy an inheritance valuable for income in times of difficulty and danger.⁷²

John Harlan of Iowa refuted the arguments of President Buchanan and urged the Senate to override the veto. Several other members (Jefferson Davis of Mississippi, Fitzpatrick of Alabama, James Pearce of Maryland, and Powell of Kentucky) signified their intention to sustain the veto.⁷³ When the vote was taken there were 27 yeas and 18 nays, and the measure was lost because thirty votes were needed for two thirds majority. The only nay vote not from the South was that of Crittenden of Kentucky.⁷⁴

On June 21, 1860 Horace Greeley published an editorial in the New York Daily Tribune pertaining to the compromise bill. He said, "The House of Representatives consented to take a half-loaf for the pioneers of Minnesota and Kansas who can not buy government lands because of the low price of products.....We do not object to taking this as an installmentbut friends of the Free Homestead principle will not rest till their whole object is attained." He maintained the bill would be only a partial remedy for speculation which was the crying evil of the land system. On June 25 he scored President Buchanan for vetoing the bill, and predicted the Northwest would hate him worse than before.

72. James D. Richardson, Messages and Papers of the Presidents, V., pp. 608-614.

73. Cong. Globe, 36 Cong., 1 Sess., pp. 3270-3272.

74. Ibid., p. 3272.

State legislatures continued sending memorials to Congress, and governors discussed the measure in their messages. In the platform adopted by the Republican Party at their Chicago convention in 1860 we find the following:

Article 13. We protest against any sale or alienation to others of the public lands held by actual settlers, and against any view of the homestead policy which regards the settlers as paupers of supplicants for public bounty; and we demand the passage by Congress of the complete and satisfactory homestead measure which has already passed the House.⁷⁵

In the New York Tribune for August 25, 1860 appeared an editorial in which Greeley defined the stand of the candidates on the disposal of the public lands. He said John Bell and Stephen A. Douglas had generally voted for some sort of land reform bills looking in the direction of free homes, but that the parties which presented them as candidates and the platforms on which they then stood were not in sympathy with those votes. The Republican Party by its efforts, arguments, votes and platform was a "free-homestead party." He quoted their platform plank given above and said no other parties mentioned free grants. Then he commented on the attitude of southern members in the following manner:

"Formerly several eminent Southern politicians spoke and voted for Free Homes, just as Mr. Calhoun was originally an earnest champion of the protective policy. But when the South discovered that protection inured to the advantage of free labor she turned against it; and so it has

75. Tribune Almanac for 1861, p. 30.

been with regard to Free Homes. Even Senator A. G. Brown of Mississippi who once insisted in the House that government had no right to take the side of the bears, wolves, and catamounts against the pioneers of industry and civilization, by holding up the price of its lands and selling to speculators instead of allotting them freely in quarter sections to actual settlers, now votes against the policy he once so forcibly commended. He does this not because his views of the intrinsic justice and beneficence of the Free-Homestead policy have changed but.....because he has discovered that Free Homesteads and Slavery Extension are deadly antagonists, and his devotion to slavery overbears every adverse consideration.

.....
We shall have the Free-Homestead policy established, because the next administration will be Republican, with a Congress of like faith. To expect it from any other is like expecting to boil a tea-kettle with snow balls. Ten years' experience, culminating in the late Presidential veto not of a full measure, but of the half measure concocted by Democrats, ought to suffice. With Lincoln for President, the passage of a thorough consistent Free-Land bill is inevitable. With either of his rivals elected we shall have a half measure at best, and more probably none at all. As the poor of the Northwest must know this, we can not doubt that Lincoln will carry all those states by overwhelming majorities.

Carl Schurz summarized southern attitude exceedingly well in a speech given in St. Louis the same summer. He said:

"But," adds the slave holder, 'of what use to us is the abstract right to go with our slave property into the territories, if you pass laws which attract to the territories a class of population that will crowd out slavery? If you attract to them the foreign immigrant by granting to him the immediate enjoyment of political right? If you allure the paupers from all parts of the globe by your preemption laws and homestead bills? We want the negro in the territories. You give us the foreign immigrant. Slavery can not exist except with the system of large farms, and your homestead bills establish the system of small farms with which free labor is inseparably connected. We are, therefore, obliged to demand that all such mischievous projects be abandoned? Nothing more plausible. Hence the right of the laboring man to acquire property in the soil by his labor is denied; your homestead bill voted down; the blight of oppressive speculation fastened on your virgin soil, and

attempts are made to deprive the foreign immigrant in the territories of the immediate enjoyment of political rights, which in the primitive state of social organizations are essential to his existence. All this in order to give slavery a chance to obtain possession of our national domain. This may seem rather hard. But can you deny that slavery for its own protection needs power in the general government? and that it cannot obtain that power except by increased representation? and that it cannot increase its representation except by conquest and extension over the territories? and that with this policy all measures are incompatible which bid fair to place the territories in the hands of free labor?"⁷⁶

Owen Lovejoy said the Republicans could not have won the election without the pledge to support a homestead bill.⁷⁷

After the election Grow introduced a homestead bill into the House, meeting in short session. Without any debate it was passed by a vote of 132 to 76. This bill went to the Senate on December 6, and on the motion of Andrew Johnson was referred to the Committee on Public Lands. Three days later Harlan of Iowa introduced another measure which was referred to the same committee. Neither bill was reported before the end of the session.

President Lincoln called the Thirty-seventh Congress for a special session which lasted from July 4, 1861 to August 6, 1861. On July 8 Aldrich of Minnesota introduced into the House a homestead bill which was read a first and second time and referred to the Committee on Agriculture from which it was not reported.⁷⁸

The first regular session opened on December 4, 1861, and shortly thereafter Lovejoy reported Aldrich's bill which

76. Quoted by Benjamin Hibbard, op. cit., p. 382.

77. Ibid., p. 383.

78. Cong. Globe, 37 Cong., 1 Sess., p. 981.

was then referred to the Committee on Public Lands.⁷⁹ That committee reported a bill to the House on December 10 the purpose of which was to secure homesteads to actual settlers, and bounties to soldiers in lieu of land grants.⁸⁰ Potter of Wisconsin explained that the provisions were substantially the same as those of the measure passed by the House during the last Congress with a few additional clauses. It provided that any person who was the head of a family or twenty-one years of age, being a citizen of the United States or having declared his intention to become one, could enter free of charge 160 acres of unappropriated land subject to preemption at \$1.25 per acre, or 80 acres open at \$2.50 per acre. Title could be secured after proof had been given of five years of residence and the payment of a \$10 fee. No lands so acquired were liable for debts contracted prior to the patenting. Soldiers and seamen serving in the war then in progress should be entitled to homesteads under the act. Those who responded to the call for volunteers on April 15, should also get \$30 in lieu of bounty lands, provided they had served three months; and those who responded to the call of July 22 should get \$100 provided they had served for six months. In both cases time spent as prisoners of war should be reckoned as service.

79. Cong. Globe, 37 Cong., 2 Sess., p. 14.

80. Ibid., p. 39.

On the day this bill was introduced Lovejoy of Illinois asked permission to offer the Committee of Agriculture bill as a substitute. He said this was the bill which had been passed during the last Congress and to which the Republicans had pledged their support before the election.⁸¹

On December 18, the bill introduced from the Committee on Public Lands was read a third time. Holman of Indiana moved to strike out the section giving cash bounties to soldiers, and suggested the men serving in this war be permitted to benefit by the bounty land act of 1855. He said the soldiers who enlisted expected the same bounty land grants as had been given for service in the Mexican War.⁸² Covode of Pennsylvania asked to have the operation of the homestead bill postponed until one year after the close of the war in order that civilians would not have an advantage over enlisted men.⁸³

Vallindigham of Ohio said Holman's proposition to give bounty lands would defeat the homestead idea and would exhaust all the surveyed lands which were ready to be put on the market. He estimated it would take 100,000,000 acres to give to those now enlisted and there were only 134,217,000 acres of surveyed lands. He thought some of the public lands should be reserved as a basis for national credit. He did not think

81. Cong. Globe, 37 Cong., 2 Sess., p. 39.

82. Ibid., p. 133.

83. Ibid., p. 134.

bounty land warrants would help the enlisted men to any extent for they would be sold very cheaply.⁸⁴ Edwards of New Hampshire did not agree with him because he thought lands should be given when they had been promised on the enlistment bills published throughout the country. He did not feel the \$30 cash payment was ample.⁸⁵ Vandever of Iowa supported Vallandigham's views.⁸⁶

Morril of Vermont wanted the bill postponed until the following February, although he favored the policy. He thought it dangerous to reduce the country's basis of credit during the crisis. The same view was held by Fessenden of Maine, Conkling of New York, Kelly of Pennsylvania, and Crittenden of Kentucky.⁸⁷ Potter of Wisconsin, Arnold and Lovejoy of Illinois, and Bingham of Ohio opposed postponement, and thought settlement of the land would bring the government greater returns in taxes.⁸⁸ Consideration was postponed till the following February by a vote of 88 to 50.⁸⁹

On February 20, the bill was brought up and a motion made to recommit it to the Committee on Public Lands accompanied by an amendment to extend the bounty act passed in 1855 to the soldiers of the Civil War.⁹⁰ Grow of Pennsylvania urged its passage and reminded the members that the bill had been

84. Cong. Globe, 37 Cong. 2 Sess., p. 134.

85. Ibid., p. 135.

86. Ibid., p. 136.

87. Ibid., p. 136-137.

88. Ibid., p. 136-139.

89. Ibid., p. 139.

90. Ibid., p. 909.

passed five times in ten years by the House of Representatives, twice by a two thirds majority, and that it had been endorsed by the popular will in primaries, state organizations, and national conventions. He said the only opposition had come from that part of the country which was then in rebellion. He did not believe it would affect the credit of the country which in his opinion rested on the ability of the people to pay taxes and not on the unproductive lands.⁹¹

On February 28 the homestead measure was the special order of the day and there was a short debate. A few members still argued for the granting of land warrants instead of cash grants to men in the service. Windom of Minnesota, a member of the Committee on Public Lands, made the only speech of any length. He said there had been two groups in the House before this, namely the friends and enemies of the homestead policy. Now he recognized three, its ardent friends, those who believed in the principle but thought it unwise to enact the bill at that time of crisis, and thirdly the few who still opposed it. He reminded members of their preelection pledges to support the free land plank in the Republican platform. He argued the passage of the bill could not ruin the credit of the country for the government would not lose its title for five years and at the end of that time the settled regions would furnish tax

91. Cong. Globe, 37 Cong., 2 Sess., pp. 909-910.

money.⁹² Potter of Wisconsin withdrew his motion to re-commit the bill with amendments. The vote was taken on its passage, and the result was 116 yeas and 16 nays.⁹³ The small nay vote is accounted for by the fact that nearly all the southern states had seceded.

When the House bill reached the Senate it was referred to the Committee on Public Lands who reported it back with amendments on March 25.⁹⁴ On May 2 it came before the Senate as a Committee of the Whole and the fifteen amendments offered by the committee were acted upon. The first one to limit the benefits to anyone otherwise eligible "who has never borne arms against the United States government or given aid and comfort to its enemies" was agreed to. The same phrase was inserted in a later section. Five amendments provided for striking out the provisions for cash payments as bounties for military service and they were agreed to. Another change agreed to was that the \$10 payment should be made at the time of filing instead of at the time of obtaining the patent. The remainder of the alterations were in rewording. Two sections were added, one providing that falsifying in connection with making the required affidavits should be punishable under the perjury law of 1857, and the other that the homesteader could get title to his land any time within the five year residence period if he

92. Cong. Globe, 37 Cong., 2 Sess., pp. 1033-1034.

93. Ibid., p. 1035.

94. Ibid., p. 1036, 1347.

paid the minimum or graduated price of the land.⁹⁵

Carlisle of Virginia still opposed the homestead policy. He therefore moved to strike out all after the enacting clause and insert as a substitute a bill which would grant 160 acres of land open to preemption at \$1.25 per acre, or 80 acres open at \$2.50 per acre to all soldiers who would see service, in lieu of other bounties. Because Pomeroy of Kansas wished to discuss this amendment, the bill was again postponed.⁹⁶ Discussion was resumed on May 5 when Pomeroy spoke for the bill and against giving more bounty land warrants.⁹⁷ On the following day Carlisle's amendment was rejected by a vote of 11 to 28. The bill was reported to the Senate from the Committee of the Whole as amended, and the amendments were concurred in. The vote was taken on the bill and the result was 33 yeas and 7 nays. The seven negative votes were cast by Bayard and Saulsbury of Delaware, Carlisle and Willey of Virginia, Davis and Powell of Kentucky, and Stark of Oregon. All but one were from the South or states bordering on the South.⁹⁸

The House of Representatives refused to concur in the Senate's amendments so a conference committee was appointed consisting of John Potter of Wisconsin, Cyrus Aldrich of Minnesota,

95. Cong. Globe, 37 Cong. 2 Sess., p. 1915.

96. Ibid., p. 1916.

97. Ibid., pp. 1937-38.

98. Ibid., p. 1951.

Edwin Webster of Maryland representing the House, and James Harlan of Iowa, Daniel Clark of New Hampshire, and Joseph Wright of Indiana representing the Senate.⁹⁹ On May 15 this committee brought in a compromise which adhered rather closely to the Senate bill. It permitted those to enter land who were heads of families or over twenty-one years of age, provided they were citizens of the United States or had declared their intention to become citizens, provided further they had never borne arms against the United States or aided its enemies. Any person less than twenty-one years could take land if they had served in the army for not less than fourteen days. Such a person could enter one quarter section or less of land which they had preempted, or which was open to preemption at \$1.25 per acre, or 80 acres open at double that price. Any person owning or residing on a tract could enter enough contiguous land to make a total of 160 acres. A fee of \$10 was to be paid at the time of entry, and the period of residence was five years, during which time the land would revert to the government if abandoned for more than six months at any time. Patent could be obtained at any time during the five year period by paying the minimum price or any price to which the land might have graduated. Homesteads were not liable for the satisfaction of debts which had been contracted prior to the issuing of the patent.¹⁰⁰

99. Cong. Globe, 37 Cong., 2 Sess., p. 2061.

100. Ibid., Appendix, p. 352. The full text of the bill is found in the Appendix, p. 159.

The conference report was concurred in by both the House and Senate.¹⁰¹ The bill was signed by President Lincoln on May 20, 1862.¹⁰² It became effective on January 1, 1863 as provided in the law itself.

Summary.

In the study of the debates and votes on the homestead bills in Congress one finds a continuously growing demand for the establishment of the free land principle from the time that the first bill was introduced in 1846 until the enactment of the law in 1862. Many influences helped to create the first demand for such a law, but a few of the most important were the precedents of land grants to early settlers, increased immigration from Europe of people who wanted to farm but had not the means to buy land, poverty in the East caused by low wages, a surplus in the treasury making the income from the lands less important, Jackson's recommendation that the lands cease to be a source of income, and the work of land reform associations and individual publicists like Horace Greeley and George Henry Evans.

The desire for the land reform was naturally strongest in the West where the public lands were located. That region was desirous of increasing its population, and naturally thought free land would bring settlers even faster than cheap land.)) The

101. Cong. Globe, 37 Cong., 2 Sess., p. 2163.

102. Ibid., p. 2186.

representatives from the South near the gulf, Mississippi, and Alabama supported the measures at first, for there was much vacant land in that region. The old South opposed the change at first because some of them were strict constructionists and did not think Congress had the power to dispose of the public domain, and because they feared it would reduce the revenue of the government. The only other source of income at that time was the tariff, and they reasoned the loss from the lands would have to be made up by increasing that form of tax, to which they were opposed. The East opposed the policy because they were still hoping to get distribution of proceeds from the land sales to the states, on a basis of population. They also feared the free land movement because they knew many of their own people would emigrate. Those who were factory owners feared this would mean an increase in wages. The first measure was introduced by Felix McConnell of Alabama, but a second one was introduced a short time later by Andrew Johnson of Tennessee who was so persistent in his efforts to secure free lands and did so much to popularize the reform that he is justly called the "Father of the Homestead Bill." Johnson introduced a bill in every Congress, of which he was a member. He served in the House till 1853 and then after being Governor of Tennessee for four years was returned to Congress as a Senator

in 1857. Galusha Grow of Pennsylvania was untiring in his efforts to bring the bill before the House of Representatives.

Other questions affected the political fortune of the homestead bills. The Native Americans opposed it because it might encourage immigration. Those who were interested in building western railroads wanted the lands saved to encourage such enterprises. The debate on the Kansas-Nebraska question delayed action in order to determine whether there could be slavery expansion. When northern advocates began to admit it would be an anti-slavery law because small homesteads were useless to slave holders, there followed a clear cut sectional division on the homestead bills. The South voted against the proposition and more New Englanders began to vote for it because of their strong abolitionist feelings. The North had a larger population and a larger proportion of members in the House so we find that body passing homestead bills in 1852, 1854, 1859, and twice in 1860. The Senate, which represents states, had a larger proportion of southern members than the House. Opposition to the homestead principle was stronger there so we find that body defeating the measure of 1852 by default, dodging the issue by providing a substitute bill late in the session of 1854. Again this body defeated the bill in 1859 by a vote in which the Vice President cast the deciding ballot, and later by

refusing to override the veto of President Buchanan in 1860, after both houses had finally passed the measure.))

During the first years of the struggle the political parties took no stand. In the vote in the House in 1854 we find similar division in both the Whig and Democratic parties, while on the later bills there is more Democratic opposition for by this time the Republicans had gained seats in Congress and they were from the first supporters of the free land policy. Only those parties opposed to slavery put a free land plank in their platforms, the Free Soilers in 1848, the Free Soil Democrats in 1852, and the Republicans in 1860, so that it was natural the South looked at the reform as an anti-slavery movement. Westerners could not obtain free lands until the secession of southern states had removed the opponents of the policy from Congress.))

After the homestead law had been in operation for nearly half a century Senator Knute Nelson, then Chairman of the Committee on Public Lands, summarized the effect of the law in the following words:

The homestead law has proved a great blessing to the poor and the needy settler in enabling him to pay for his farm by merely residing upon, improving and cultivating the same for a period of five years. Starting without any capital except a zealous spirit and strong arms, he finds himself at the end of five industrious years the possessor of a good home worth from three to six thousand dollars, and a meanwhile he has been paying his taxes, furnishing trade and traffic for the merchants and the railroads, and living immune from the controversies of capital and labor,

because in his case capital and labor have been concentrated in one head.¹⁰³

George W. Julian of Indiana who was one of the early advocates of the homestead bill in Congress was still of the opinion twenty-three years after its passage that the homestead bill was "the most important legislative act since the formation of the Government."¹⁰⁴

¹⁰³. Knute Nelson, "Summary of Our Most Important Land Laws," Annals of the American Academy of Political Science, XXX. (May, 1909) pp. 613-615.

¹⁰⁴. George W. Julian, "The Spoilation of the Public Lands," The North American Review, CXLII. (August, 1885), p. 175.

Table I

ANALYSIS OF HOUSE VOTE ON BILL FOR CASH SALE
OF PUBLIC LANDS, APRIL 20, 1820

State and Section	Yea Vote	Nay Vote	Not Voting
North East			
New Hampshire	4	0	2
Vermont	5	0	1
Massachusetts	16	0	3
Connecticut	6	1	0
Rhode Island	2	0	0
New York	21	2	4
Pennsylvania	22	0	1
Delaware	2	0	0
New Jersey	5	1	0
Middle West			
Ohio	6	0	0
Indiana	0	1	0
Illinois	0	1	0
Border States			
Kentucky	3	4	2
Tennessee	1	4	1
Old South			
Maryland	6	0	3
Virginia	13	4	6
North Carolina	10	2	1
South Carolina	5	1	3
Georgia	5	0	1
Alabama	0	1	0
Mississippi	1	0	0
Louisiana	0	1	0
Total	133	23	28

Table II

HOUSE VOTE ON BILL APPROVED MARCH 3, 1807, TO
PUNISH TRESPASSERS ON PUBLIC LANDS

State	Yea Vote	Nay Vote
New Hampshire	0	4
Vermont	0	4
Massachusetts	0	10
Connecticut	0	5
Rhode Island	0	2
New York	4	7
Pennsylvania	12	1
Delaware	0	0
New Jersey	2	4
Maryland	6	1
Virginia	15	1
North Carolina	8	1
South Carolina	6	0
Georgia	2	0
Kentucky	2	2
Tennessee	0	0
Ohio		1
Total	57	43

Table III

ANALYSIS OF THE VOTE IN THE HOUSE, THIRTY-SECOND CONGRESS
ON THE HOMESTEAD BILL AS AMENDED BY ANDREW JOHNSON MAY 12,
1852^a

State and Section	Yea vote	Nay vote	Not voting
Northeast			
Maine	0	3	5
New Hampshire	2	2	0
Vermont	2	0	2
Massachusetts	4	1	6
Connecticut	3	1	0
Rhode Island	1	1	0
New York	13	6	15
Pennsylvania	11	2	11
Delaware	1	0	0
New Jersey	2	1	2
Middle West			
Ohio	12	5	4
Indiana	8	0	2
Illinois	7	0	0
Michigan	1	1	1
Wisconsin	3	0	0
Iowa	2	0	0
Border States			
Kentucky	6	2	2
Tennessee	9	1	1
Missouri	4	0	1
Arkansas	1	0	0
Texas	0	1	1
Old South			
Maryland	2	2	2
Virginia	2	12	1
North Carolina	0	5	4
South Carolina	0	7	1
Georgia	0	3	5
Florida	0	0	1
Alabama	6	0	0
Mississippi	1	0	3
Louisiana	3	0	1
Far West			
California	1	0	1
Total	107	56	72

^a The membership is taken from Biographical Dictionary of Congress. Vote recorded Cong. Globe, 32 Cong., Sess., p. 1351.

TABLE IV

ANALYSIS OF SENATE VOTE ON POSTPONING PRIOR ORDERS TO TAKE
UP HOMESTEAD BILL(JOHNSON'S) AUGUST 6, 1852

State and Section	Yea vote	Nay vote
Northeast		
Maine	0	2
New Hampshire	1	1
Vermont	0	1
Massachusetts	1	1
Connecticut	0	2
Rhode Island	2	0
New York	1	1
Pennsylvania	1	1
Delaware	0	2
New Jersey	0	0
Middle West		
Ohio	2	0
Indiana	1	0
Illinois	1	1
Michigan	1	1
Wisconsin	2	0
Iowa	2	0
Border States		
Kentucky	0	2
Tennessee	0	2
Missouri	0	2
Arkansas	0	2
Texas	0	1
Old South		
Maryland	0	2
Virginia	0	2
North Carolina	0	2
South Carolina	0	2
Georgia	0	2
Florida	0	2
Alabama	0	1
Mississippi	0	2
Louisiana	1	1
Far West		
California	0	0
Total	16	38

TABLE V

ANALYSIS OF THE HOUSE VOTE ON GOODE'S RESOLUTION IN THE
THIRTY-THIRD CONGRESS TO TABLE THE HOMESTEAD BILL, AND
THE VOTE ON THE SAME BILL MARCH 6, 1854^a

SECTION AND STATE	Yea vote on tabling	Nay vote on tabling	Not voting	Yea on bill	Nay on bill	Not voting
Northeast						
Maine	1	4	1	2	3	1
New Hampshire	3	0	0	0	3	0
Vermont	1	2	0	0	3	0
Connecticut	3	1	0	1	3	0
Massachusetts	3	6	2	3	6	2
Rhode Island	0	2	0	1	1	0
New York	4	17	11	13	8	11
Pennsylvania	3	15	7	15	2	8
Delaware	0	0	1	0	0	1
New Jersey	0	3	2	3	0	2
Middle West						
Ohio	0	18	3	16	0	5
Indiana	1	6	4	6	1	4
Illinois	0	8	1	8	0	1
Michigan	0	3	1	2	0	2
Wisconsin	0	2	1	2	0	1
Iowa	0	1	1	2	0	0
Border States						
Kentucky	1	8	1	8	1	1
Tennessee	0	8	1	7	0	2
Missouri	0	6	1	6	0	1
Arkansas	0	2	1	2	0	1
Texas	1	0	1	0	1	1
Old South						
Maryland	3	2	1	1	3	2
Virginia	11	1	1	1	11	1
North Carolina	8	0	0	0	8	0
South Carolina	4	0	2	0	5	1
Georgia	6	0	2	0	4	4
Florida	0	1	0	1	0	0
Alabama	2	4	1	4	3	0
Mississippi	3	1	1	1	3	1
Louisiana	2	2	0	2	2	0
Far West						
California	0	1	1	0	1	1
Total	60	124	49	107	72	54

^a Cong. Globe, 33 Cong., 1 Sess., pp. 547-549.

Table VI

ANALYSIS OF THE SENATE VOTE IN THE THIRTY-THIRD CONGRESS
ON THE HUNTER SUBSTITUTE AND ON THE PASSAGE OF THE
HOMESTEAD BILL AS AMENDED, JULY 20, 1854^a

Section and State	Yea on Amend.	Nay on Amend.	Yea on Bill	Nay on Bill
Northeast				
Maine	0	1	1	1
New Hampshire	0	0	0	0
Vermont	0	1	0	1
Massachusetts	0	1	1	1
Connecticut	1	1	1	1
Rhode Island	1	1	1	0
New York	0	1	0	1
Pennsylvania	1	0	1	0
Delaware	0	0	0	0
New Jersey	1	0	1	0
Middle West				
Ohio	0	2	1	0
Indiana	2	0	2	0
Illinois	2	0	2	0
Michigan	2	0	2	0
Wisconsin	2	0	2	0
Iowa	2	0	2	0
Border States				
Kentucky	1	0	0	0
Tennessee	0	2	0	2
Missouri	2	0	2	0
Arkansas	2	0	2	0
Texas	2	0	2	0
Old South				
Maryland	0	1	0	2
Virginia	2	0	2	0
North Carolina	0	1	0	1
South Carolina	2	0	2	0
Georgia	1	1	1	1
Florida	1	0	1	0
Alabama	2	0	2	0
Mississippi	2	0	2	0
Louisiana	2	0	1	0
Far West				
California	1	0	2	0
Total	34	13	36	11

^a Cong. Globe, 33 Cong., 1 Sess., p. 1844 and Appendix p. 1122.

Table VII

ANALYSIS OF THE HOUSE VOTE ON THE HOMESTEAD BILL
IN THE THIRTY-FIFTH CONGRESS FEBRUARY 1, 1859^a

Section and State	Yea	Party Division ^b	Nay	Party Division
Northeast				
Maine	5	(5 R.)		
New Hampshire	3	(3 R.)		
Vermont	3	(3 R.)		
Massachusetts	10	(10 R.)		
Connecticut	3	(2 R., 1 D.)		
Rhode Island	2	(2 R.)		
New York	27	(18 R., 9 D.)		
Pennsylvania	13	(9 R., 4 D.)	1	(1 D.)
Delaware	0		1	(1 D.)
New Jersey	4	(2 R., 2 D.)		
Middle West				
Ohio	19	(12 R., 7 D.)	1	(1 R.)
Indiana	8	(5 R., 3 D.)	3	(3 D.)
Illinois	7	(4 R., 3 D.)	2	(2 D.)
Michigan	4	(4 R.)		
Wisconsin	3	(3 R.)		
Iowa	2	(2 R.)		
Minnesota	2	(2 R.)		
Border States				
Kentucky	1	(1 D.)	5	(3 D., 2 A.)
Tennessee	1	(1 D.)	8	(5 D., 3 A.)
Missouri	1	(1 D.)	3	(1 D., 2 A.)
Arkansas			1	(1 D.)
Texas			1	(1 D.)
South				
Maryland			6	(3 D., 3 A.)
Virginia			11	(11 D.)
North Carolina			8	(6 D., 2 A.)
South Carolina			5	(5 D.)
Georgia			8	(8 D.)
Florida			0	
Alabama			7	(7 D.)
Mississippi			4	(4 D.)
Louisiana			1	(1 D.)
Far West				
California	2	(2 D.)		
Total	120	(86 R.) (34 D.)	76	(1 R.) (62 D.) (13 A.)

a. Vote recorded in Cong. Globe, 35 Cong., 2 Sess., p. 727. Party designation from Tribune Almanac, for 1860, page 26.
b. Democrats are designated D, Republicans R, and Americans A.

Table VIII

ANALYSIS OF VOTE ON THE LOVEJOY BILL
HOUSE OF REPRESENTATIVES, MARCH 12, 1860 ^a

Section and State	Yea	Nay
Northeast		
Maine	6	
New Hampshire	2	
Vermont	3	
Massachusetts	8	
Connecticut	4	
Rhode Island	1	
New York	21	
Pennsylvania	17	1
Delaware		1
New Jersey	3	
Middle West		
Ohio	18	
Indiana	10	
Illinois	7	
Michigan	4	
Wisconsin	3	
Iowa	2	
Minnesota	2	
Border States		
Kentucky		8
Tennessee		7
Missouri	1	3
Arkansas		1
Texas		2
South		
Maryland		4
Virginia		10
North Carolina		5
South Carolina		4
Georgia		7
Florida		
Alabama		6
Mississippi		5
Louisiana		1
Far West		
California	2	
Oregon	1	
Total	116	65

^a. Cong. Globe, 36 Cong., 1 Sess., p. 1115.

ANDREW JOHNSON'S FIRST HOMESTEAD BILL

(This is the bill which he tried to make an amendment to the bill to graduate the price of public lands, on July 10, 1846. The bill had been read by title before.)

Section 1 -- That every person who is the head of a family, shall from and after the passage of this act, be entitled to enter free of cost one quarter section of vacant and unappropriated public land, or a quantity equal thereto, to be located in a body, in conformity with the legal subdivisions of the public lands.

Section 2 -- And be it further enacted, That the person applying for the benefit of this act shall upon application to the register of the land office in which he is about to make such entry, make affidavit before the said register, that he is the head of a family, and destitute of means to purchase a quantity equal to a quarter section of land, and shall in addition thereto, furnish a certificate of three respectable householders that he is a poor man, the head of a family, and of good moral character; and making the affidavit above required, and filing this certificate with the register, he shall thereupon be permitted to enter the quantity of land already specified, Provided however: That no certificate or receipt shall be given, nor patent issued therefor, until the expiration of four years from the date of entry; and if at the expiration of such time the person making such entry shall prove by two credible witnesses that he has continued to reside upon and cultivate said land, and still resides upon the same, and has not alienated the same, or any part thereof, then in such case he shall be entitled to a certificate and patent as in other cases.

Section 3 -- And be it further enacted; That on the expiration of four years from the date of the register's certificate, the applicant, or his or her attorney, may apply for and obtain a patent for the land: Provided satisfactory proof is made to the register that the applicant is residing on the land for which the patent is required.

Section 4 -- And be it further enacted; That the register shall keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Section 5 -- And be it further enacted, That all lands entered by, and granted to any person under the provisions of this act free of cost, shall be and forever remain exempt from the debts and liabilities of the person to whom the levies, seizures and sales of every kind for, and on account of, such debts and liabilities. And such lands, upon the death of the person to whom the same shall have been granted, shall descend to, and the right and title thereof, shall be vested in the widow and children of the person to whom the lands were granted, under the laws in such cases of the State in which the lands shall be situated.

Brown's Substitute for Homestead Bill.
To Follow Enactment Clause.
May 11, 1852.^a

That the law now in force granting preemption to actual settlers on the public lands, shall continue until otherwise ordered by Congress, and that the same be extended to all territories in the United States.

Sec. 2.--And be it further enacted, that from and after the passage of this act, the rights of preemptors shall be perpetuated; that is to say persons acquiring the rights of preemption of any kind shall retain the same without disturbance, and without payment of any kind to the United States, but on these conditions: First, the preemptor shall not sell, alienate or dispose of his or her right for a consideration; and if he or she voluntarily abandons one preemption and claims another, no right shall be acquired by such claim, until the claimant shall first have testified, under oath, before the register of the land office when the claim is preferred, before he or she has voluntarily abandoned his or her original preemption and that no consideration, reward, or payment of any kind has been received, or is expected, directly or indirectly, as an inducement for such an amendment and any person who shall testify falsely in such case, shall be guilty of perjury. Second, any person claiming and holding the right of preemption to the lands under this act, may be required, by the State within which the same lies, to pay taxes thereon; and in case such lands are sold for taxes, the purchaser shall acquire such rights as the preemptor and any others. Third, Absence of the preemptor and his family, for six consecutive months, shall be deemed an abandonment, and the land shall in such case, revert to the United States, and be subject to the same disposition as other public lands.

Sec. 3.--And be it further enacted, That lands preempted, and the improvements thereon, shall not be subject to execution sale, or other sale for debt; and all contracts made in reference thereto, intended in any wise to alienate the right, or to embarrass or disturb the preemptor in his or her occupancy, shall be absolutely null and void.

Sec. 4.--And be it further enacted, That the preemptor may, at any time at his or her discretion, enter the lands preempted, by paying therefor to the proper officer of the United States one dollar and twenty-five cents per acre.

Sec. 5.--And be it further enacted, That in case of the preemptor's death, if a married man, his right shall survive to his widow and infant children, but the rights of the older children shall cease as they respectively become of age when they reach the age of twenty-one years; in all cases the right of preemption shall remain in the youngest child. And

^a. Cong. Globe, 32 Cong., 1 Sess., p. 1332.

in case of the death of both father and mother, leaving an infant child or children, the executor, administrator or guardian may, upon submitting satisfactory proof of that fact to the register and receiver of the proper land office, demand a certificate of title to the land so preempted for the benefit of said infant child or children, and may thereafter sell said lands, or otherwise dispose of them, for the benefit of the infant child or children aforesaid.

JOHNSON'S AMENDMENT WHICH BECAME THE HOMESTEAD BILL
PASSED IN THE HOUSE DURING THE THIRTY-SECOND CONGRESS.
May 12, 1852.

That any person who is the head of a family, and citizen of the United States, or any person who is the head of a family, and had become a citizen prior to the first day of January, eighteen hundred and fifty-two, as required by the naturalization laws of the United States, shall from and after the passage of this act, be entitled to enter, free of cost, one quarter section of vacant and unappropriated public lands, or a quantity equal thereto, to be located in a body in conformity with the legal subdivision of the public lands, and after the same shall have been surveyed.

Sec. 2.--And be it further enacted, that the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register, that he or she is the head of a family, and is not the owner of any estate in land, at the time of such application, and has not disposed of any estate in land to obtain the benefits of this act; and upon making the affidavits above required, and filling the affidavit with the register, he or she shall thereon be permitted to enter the quantity of land already specified: provided, however, that no certificate shall be given for patent issued therefor until the expiration of five years from the date of such entry; and, if, at the expiration of such time, the person making such entry, or if he be dead, his widow, or in case of her death, his heirs or devisee, or in case of a widow making such entry, her heirs or devisee in case of her death, shall prove by two credible witnesses, that he, she, or they have continued to reside upon and cultivate said land, and still reside upon the same, or any part thereof, then in such case, he, she, or they shall be entitled to a patent as in other cases provided for by law: And provided further, In case of death of both father and mother, leaving an infant child or children, under fourteen years of age, the right and the fee shall inure to the benefit of said infant child or children, and the executor, administrator, or guardian may at any time two years after death of the surviving parent, sell said land for the benefit of said infants, but for no other purpose, and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States.

Sec. 3.--And be it further enacted, that the register of the land office shall note all such applications on the tract books, and plats of his office, and make return thereof to the General Land Office, together with the proof on which they have been founded.

Sec. 4.--And be it further enacted, that all land acquired under the provisions of this act, shall in no event, become liable to the satisfaction of any debt, or debts contracted prior to the issuing the patent therefor.

Sec. 5.--And be it further enacted, that if at any time after filing the affidavit, as required in second section of this act, and before the expiration of five years as aforesaid, it shall be proven by two or more respectable witnesses, upon oath to satisfaction of ^{the} register of land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said entry for more than six months at one time, then in that event the land so entered shall revert back to the Government, and be disposed of as are other public lands now by law.

Sec. 6.--And be it further enacted, That if any individual now a resident of one of states or territories and not a citizen of the United States, but at time of making such application for the benefit of this act, shall have filed a declaration of intention as required by naturalization laws of United States, and shall become a citizen of same before issuance of patent, as made and provided for in this act, shall be placed upon an equal footing with natural born citizens of United States.

Sec. 7.--And be it further enacted, no individual shall be permitted to make more than one entry under act; ^{the} Commissioner of General Land Office is required to prepare and issue rules and regulations consistent with this act, necessary and proper to carry it into effect; registers and receivers of land offices are entitled to receive the same compensation for any lands patented under provisions of this act, that they are now entitled to receive, when same quantity of land is entered with money, to be paid by the party to whom patent shall be issued: Provided however; all persons entering land under provisions of this act, shall, as near as may be practicable, in making such entries be confined to each alternate quarter section, and to land subject to private entry: And provided further nothing in this act shall be construed as to impair or interfere in any manner with existing preemption rights.

THE HUNTER AMENDMENT AS AMENDED AND ADOPTED
JULY 20, 1854

Be it enacted etc. that the minimum price of the public lands of the United States shall remain unchanged until the commencement of the fiscal year, beginning July 1, 1855, but after that period the price shall be reduced to the following scale: All lands which shall have been offered at public sale, and remain unsold for ^{five} years shall be reduced to the price of \$1 per acre; all lands which shall have been offered at public sale, and remain unsold for ten years shall be reduced to 75 cents an acre; all lands which shall have been offered at public sale, and remain unsold for fifteen years shall be reduced to 50 cents an acre; all lands which shall have been offered at public sale, and remain unsold for twenty years shall be reduced to 25 cents an acre; all lands which shall have been offered at public sale, and remain unsold for thirty years shall be reduced to 12½ cents an acre; Provided, that the graduating process, from 50 cents to 25 cents an acre, shall not take place till the lands in the 50¢ class shall have been exposed to sale for a period of at least two years, at the price of 50¢ per acre; after which the price of the said lands shall be reduced to twenty-five cents per acre.

Sec. 2. And be it further enacted, that whenever a state shall desire to acquire a preemption right to all the lands of any certain class and price, as provided in the first section of this act, within its borders, for other purposes than a railroad or a canal, and signify the same to the President of the United States, by an act of its Legislature at a general session, duly passed and authenticated, it shall be granted on the following terms and in the manner hereinafter prescribed: That said state may fix the price of said lands above that prescribed in the first section of this act, reserving the excess to itself: Provided that the title shall not pass to the purchaser until he has paid the price fixed in the first section to the United States; which upon said payment, and a presentation of certificate of title from the state, duly authenticated, shall through its proper officers, issue a patent for the said land to the purchaser: Provided however, that the lands shall be subject to the same legal subdivisions in the sale and survey as are now provided by law; nor shall the sites and fortifications, navy and dock yards, arsenals, and magazines, and other public buildings, be considered as included within the provisions of this act: and provided further, that any state which shall accept the provisions of this act, and shall preempt any lands under it, shall take them in full of the 5% fund thereafter to become due from the proceeds of said lands; but the state thus accepting the provisions of this and the proceeding section, shall take

the lands at the price fixed for each particular class, except that no lands shall be sold by them for 25¢ an acre, until they shall have been previously subject to entry through a period of two years, at the price of 50¢ per acre, to be paid to the United States.

Sec. 3. And be it further enacted, that whenever a state has chartered, or shall charter, a railroad or canal to run through the lands of the United States or when any company shall have been organized for that purpose, under any general law of any state, and such state shall accept the benefit of the provisions hereinafter perscribed by an act to be passed at a general session of its Legislature, upon due notice being given of the fact to the Secretary of Interior, it shall be his duty to set apart, of the public lands seven thousand, six hundred eighty acres per mile of railroad or canal, within twelve miles on each side, and as near the route of such railroad, or canal as possible, and the same shall be withdrawn from sale or entry, by public advertisement of the Secretary of Interior, except in the manner and form hereinafter perscribed: The price of these lands shall be \$1 per acre for those which have not yet been offered at public sale, or for those which have been subject to entry less than 5 years; 75¢ for those which have been subject to entry more than 5 years and less than 10 years; 50¢ for those which have been subject to entry more than 10 years and less than 20 years; 25¢ for those which have been subject to entry more than 20 years: Provided that the price which the lands bear when first set apart shall remain uniform, and be subject to no graduation during the 10 years herein perscribed as the period within which the state may dispose of the lands.

Sec. 4. And be it enacted, that whenever a state through which the said railroad or canal passes, and in which the said lands lie, shall desire to do so, it may select as preemptor, all the lands so reserved at the minimum prices designated in the ^{third} section of this act, but the state must take up and pay in cash for said land within 10 years from the time when set apart by the Secretary of the Interior, or otherwise its right to such of them as remain unsold shall be forfeited. But before the expiration of this period the state may sell the lands, thus reserved to individuals or corporations: Provided, that no title shall vest in the purchaser until he presents to the receiver of the proper land office of the United States a certificate of purchase, duly authenticated according to the law of the state from which it issues, and pay to the said receiver, for the use of the United States the price herein fixed as the price per acre for which the lands shall be sold; upon the issue of the receipt for the money and certificate as aforesaid, the patent shall be given in the manner now perscribed by law: Provided however, that with the exception of the certificate aforesaid, the land shall be

purchased or entered, and the title given, according to the same forms, and in the same quantities, now prescribed by the laws of the United States.

Sec. 5. And be it further enacted, That in the advent of a difference between the Post Master General and the railroad company, as to the compensation for carrying the mails of the United States, the matter shall be settled by mutual agreement, between the Post Master General and the Governor of the state in which such railroads lie; and that the benefit of this act can only be claimed when the charter provides, by sufficient forfeitures and penalties, (in the option of the Post Master General) for forcing the railroad company, or companies, to perform the said award, or when the end can be effected by contracts and stipulations satisfactory to the Postmaster General.

Sec. 6. And be it further enacted, That the lands purchased by any state, under the provisions of the 3d section of this act, shall be applied by the said state for the construction of the railroad or canal, for which they were reserved; but the time and manner of selling said lands, and the mode of appropriating them, in conformity with the provisions of this act, shall be determined by the state to which the remainder of the proceeds of this fund belongs, after its application to the construction and completion of said railroad or canal: Provided however, That the acceptance by the state of the 3d section of this act, shall be considered as an assent, on its part, to appropriate the said lands as prescribed in the said 3d section of this act, which shall take effect from its passage: And provided further, That no lands shall be included within the operation of this act to which the Indian title has not been extinguished.

Sec. 7. And be it further enacted, That this act shall in no way apply to town or village property either in lots or outlots, nor be so construed as to interfere with any preemption claim, nor to lands reserved for schools, salines, or other purposes, under any existing laws of the United States, or to any of the mineral lands of the United States, the lands covered by such preemptions, or embracing such minerals, being hereby expressly excluded, from the operations of this act. And full power and authority are hereby given to the Secretary of the Interior to make all needful rules and regulations for fully carrying into effect the several provisions of this act. The said Secretary of Interior is also authorized to fix a uniform price, according to some one of the classifications of this act, upon all the lands of a township, where different parts of the same have been exposed to sale for different periods of time, according to the respective provisions herein contained: Provided however, That this provision shall not extend to town or village property, or to sections and special reservations made by the Department.

Sec. 8. And be it further enacted, That any free white

person who is the head of a family, or who has arrived at the age of twenty-one years, and is capable of holding lands under the laws of the state in which the lands lie, or if they lie in a Territory, then any person who is capable of acquiring a pre-emption under the laws of the United States, shall from and after the passage of this act, be entitled to enter a quarter section of vacant and unappropriated public lands, and no more, which may at the time the application is made, be subject to private entry, or a quantity equal thereto, to be located in a body, in conformity with the legal subdivisions of the public lands; Provided, that lands ceded by any Indian Tribe stipulating for the payment of such Indians of the net proceeds of the sales of the ceded lands, shall not be subject to the operations of this act, except at the graduated prices, therefore.

Sec. 9. And be it further enacted, That the person applying for the benefit of the 8th section of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register that he or she is the head of a family, or is twenty-one years of age, and that such application is made for his or her exclusive use and benefit and those specially mentioned therein, and not either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon making the affidavit as herein required and filing it with the register he or she shall thereupon be permitted to enter the quantity of land specified: Provided however, that no certificate shall be given or patent issued therefor, until the expiration of five years from date of such entry; and until the person or persons entitled to the land so entered shall have paid for the same 25¢ per acre or if the lands have been in the market more than 20 years, 12½¢ per acre; and if, at the expiration of such time, the person making such entry, or if he be dead his widow, or in case of her death, his heirs or devisee, or in the case of a widow making such entry, her heirs or devisee, in case of her death, shall prove by two credible witnesses that he, she, or they, have continued to reside upon and cultivate said land and still reside upon the same, then in such case he, she, or they, shall be entitled to a patent, as in other cases provided for by law; And provided further, In case of the death of both father and mother, leaving an infant child or children under 21 years of age, the right and the fee shall inure to the benefit of said infant child or children, and the executor, administrator, or guardian, may at any time within two years after the death of the surviving parent, and in accordance with the laws of the state, in which such children, for the time being, have their domicile, sell said land and apply the proceed of the sale thereof, first for the payment of what may be due for it to the United States, and the residue for the benefit of said infants and for no other purpose; and the purchaser shall acquire the

absolute title by the purchase and be entitled to a patent from the United States.

Sec. 10. And be it further enacted, That the register of the land office shall note all such applications on the tract books and plots of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Sec. 11. And be it further enacted, That any person who may have filed his or her affidavit of an intention to settle a quarter section of land, under the provisions of this act, may at any time, acquire the title thereto, by paying the full graduated price for the same, as fixed therein. But no person or persons shall be allowed to file a declaration of intention to settle, for the purposes of claiming the benefits or provisions of this act, in regard to five years' actual settlement, after the state shall have purchased, or taken as preemptor, the class in which said lands lie, under the provisions of this act, unless the state, in regard to such lands, shall continue, by an act of its Legislature, the privileges herein granted to the actual settler for a period of five years. Provided however, That the lands which may be taken by the purchase or preemption by the state, as herein provided, for the purposes of a railroad or canals, shall not be subject to entry at the price of the lands as fixed in the ninth section of this act, unless the settlement was commenced before the lands were taken by the state.

HOUSE BILL NUMBER 72, REPORTED TO THE HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON PUBLIC LANDS, JANUARY 26, 1859

(Congressional Globe, 35 Congress, 2 Session, page 612.)

A Bill to Secure Homesteads to Actual Settlers on the Public Domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or has arrived at the age of twenty-one years, and who is a citizen of the United States, or shall have declared his intention to become such, as required by the naturalization laws of the United States, shall from and after the passage of this act be entitled to enter, free of cost, one quarter section of vacant and unappropriated lands, which may at the time the application is made, be subject to private entry, at \$1.25 per acre, or a quantity equal thereto, to be located in a body, in conformity with the legal subdivisions of public lands, and after the same shall have been surveyed.

Sec. 2 And be it further enacted, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is the head of a family, or is twenty-one years or more of age, and that such application is made for his or her exclusive use and benefit, and that such application is made for his or her exclusive use and benefit, and those specially mentioned in this act, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon making affidavit as above required, and filing the affidavit with the register, he or she shall thereupon be permitted to enter the quantity of land already specified: Provided however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry: and if at the expiration of such time, or at any time thereafter, the person making such entry, or if he be dead, his widow, or in case of her death, his heirs or devisees, in case of her death shall prove by two credible witnesses, that he, she or they have continued to reside upon and cultivate such land, and still reside upon the same, and have not alienated the same, or any part thereof, then in such case, he, she or they, if at that time a citizen of the United States, shall on payment of ten dollars be entitled to a patent, as in other cases provided for by law: and provided further in case of the death of both father and mother, leaving an infant child or children, under twenty-one years of age, the right and the fee shall inure to the benefit of said infant child, or children, and the executor, administrator, or guardian may at any time within two years after the death of the surviving parent, in accordance with the laws of the State in which such children for the time being have their domicile, sell said

land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States.

Sec. 3. And be it further enacted that the register of the land office shall note all such applications on the tract-books and plats of his office, and keep a register of all such entries, and make a return thereof to the General Land Office, together with the proof upon which they have been founded.

Sec. 4. And be it further enacted, That all lands acquired under the provisions of this act shall on no event become liable for the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

Sec. 5. And be it further enacted that if at any time after the filing of the affidavit as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said entry for more than six months at any time, then, in that event, the land entered shall revert back to the Government, and be disposed of as other public lands are now by law, subject to an appeal to the General Land Office.

Sec. 6. And be it further enacted, That no individual shall be permitted to make more than one entry under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application, at the time of so doing and the other half on the issue of the certificate by the person to whom it may be issued, Provided, That nothing in this act shall be construed as to impair or interfere in any manner whatever with existing preemption rights.

A BILL TO SECURE HOMESTEADS TO ACTUAL SETTLERS ON THE PUBLIC DOMAIN

Reported by Mr. Lovejoy on March 6, 1860, from the Committee on Public lands, to the House of Representatives. This is the same as the bill previously introduced by Mr. Grow.

(Congressional Globe, 36 Congress, 1 Session pages 1014, 1115).

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, (or who has arrived at the age of twenty-one years,) and is a citizen of the United States, (or shall have filed his intention to become such, as required by the naturalization laws of the United States,) shall from and after the passage of this act, be entitled to enter free of cost, one hundred and sixty acres of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres of such unappropriated lands, at two dollars and fifty cents per acre; to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed.

Sec. 2. And be it further enacted, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver, that he or she is the head of a family, or is twenty-one years or more of age, and that such application is made for his or her exclusive use and benefit, and those specially mentioned in this act, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the affidavit with register or receiver, he or she shall thereupon be permitted to enter the quantity of land specified; Provided however That no certificate shall be given or patent issued herefor until the expiration of such time, or at any time within two years thereafter, the person making such entry-or if he be dead his widow; or, in case of her death, his heirs or devisee; or, in case of her death, his heirs or devisee; or, in case of a widow making such entry, her heirs or devisee, in case of her death-shall prove by two credible witnesses that he, she, or they have resided upon and cultivated the same for a term of five years immediately succeeding the time of making the affidavit aforesaid; then in such case he, she or they, if at that time a citizen of the United States, shall, on payment of

ten dollars, be entitled to a patent, as in other cases provided for by law; And provided further, That in the case of the death of both father and mother, leaving an infant child or children, under twenty-one years of age, the right and fee shall inure to the benefit of said infant child, or children; and the executor, administrator or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and the sum of money herein specified.

Sec. 3. And be it further enacted, That the register of the Land Office shall note all such applications on the tract-books and the plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Sec. 4. And be it further enacted, That all lands acquired under the provisions of this act shall on no event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

Sec. 5. And be it further enacted, That if at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said entry for more than six months at any time, then, and in that event, the land so entered shall revert to the government.

Sec. 6. And be it further enacted, That no individual shall be permitted to make more than one entry under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issuing of the certificate, by the person to whom it is issued; Provided, That nothing in this act shall be so construed, as to impair or interfere in any manner whatever with existing preemption applications for a preemption right prior to the passage of this act shall be entitled to all the privileges of this act.

THE BILL AS REPORTED BY THE CONFERENCE COMMITTEE
OF BOTH HOUSES. (JUNE 19, 1860)

(Congressional Globe, 36 Cong. 1 Sess., page 3178.)

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, and a citizen of the United States, shall, from and after the passage of this act, be entitled to enter one quarter section of vacant and unappropriated public lands, or any less quantity, to be located in a body, in conformity with the legal subdivisions of the public lands, after the same shall have been surveyed, and upon the following conditions; that the person applying for the benefit of this act shall, upon application to the register of the land office of which he or she is about to make such entry, make affidavit before the said register or receiver of said land office that he or she is the head of a family, and is actually settled on the quarter section, proposed to be entered, and that such application is made for his or her benefit, or for the use and benefit of those specially mentioned in this section, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and that he or she has never at any previous time, had the benefit of this act; and upon making the affidavit as above required, and filing the same with the register, he or she shall thereupon be permitted to enter the quantity of land already specified: Provided however, That no final certificate shall be given, or patent therefor issued, until the expiration of five years from the date of such entry; and, if at the expiration of such time, the person making such entry, or, if he be dead, his widow, or, in case of her death, his child or children, or in the case of a widow making such entry, her child or children, in case of her death, shall prove by two credible witnesses, that he, she, or they--that is to say some member or members of the same family--has or have erected a dwelling house upon said land, and continued to reside upon the same, (and that neither the said land or any part thereof has been alienated); then in such case, he, she, or they upon the payment of twenty-five cents per acre for the quantity entered, shall be entitled to a patent, as in other cases provided by law; And provided further in the case of the death of both father and mother leaving a minor child or children, the right and fee shall inure to the benefit of said minor child or children, and the guardian shall be authorized to perfect the entry for the beneficiaries, as if there had been a continued residence of the settler for five years. Provided that nothing in this section shall be so construed as to embrace or in any way include any quarter section or fractional quarter section of land upon which any pre-emption right has been acquired prior to the passage of this act.

And provided further, That all entries made under the provisions of this section, upon lands which have not been offered for public sale, shall be confined to and upon sections designated by odd numbers.

Sec. 2. And be it further enacted, That the register of the land office shall note all such applications on the tract-books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Sec. 3. And be it further enacted, That no land acquired under the provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts until after the issuing of the patent therefor.

Sec. 4. And be it further enacted, That if at any time, after filing the affidavit, as required in the first section of this act, and before the expiration of five years aforesaid, it shall be proved, after due notice to the settler, to the satisfaction of the register of the Land Office, that the person having filed such affidavit shall have sworn falsely in any particular, or shall have voluntarily abandoned the possession and cultivation of said land for more than six months at any time, or sold his right under the entry, then, and in either of those events, the register shall cancel the entry, and the land so entered shall revert to the Government, and be disposed of as are other public lands now by law, subject to an appeal to the Secretary of the Interior. And in no case shall any land, the entry whereof shall have been cancelled, again be subject to occupation, or entry, or purchase, until the same shall have been reported to the General Land Office, and by the direction of the President of the United States, again advertised and offered for public sale.

Sec. 5. And be it further enacted, That if any person, now or hereafter a resident of any one of the States or Territories, and not a citizen of the United States, but who at the time of making such application for the benefit of this act, shall have filed a declaration of intention, as required by the naturalization laws of the United States, and shall have become a citizen of the same before the issuing of the patent as provided for in this act, such persons shall be entitled to all the rights conferred by this act.

Sec. 6. And be it further enacted, That no individual shall be permitted to enter more than one quarter section or fractional quarter section, and that in a compact body; but entries may be made at different times, under the provisions of this act; and that the Secretary of the Interior is hereby required to prepare and issue from time to time, such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; but the registers and receivers of the several land offices, shall be entitled to receive, upon the filing of the first affidavit, the sum

of fifty cents each, and a like sum upon the issuing of the final certificate. But this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver; Provided, That nothing in this act shall be so construed as to impair the existing preemption, donation, or graduation laws, or to embrace lands which have been reserved to be sold or entered at the price of \$2.50 per acre; but no entry under said graduation act shall be allowed until after proof of actual settlement and cultivation or occupancy for at least three months, as provided for in section 3 of the said act.

Sec. 7. And be it further enacted, That each actual settler upon lands of the United States, which have not been offered at public sale, upon filing his declaration or claim, as now required by law, shall be entitled to two years from the commencement of his occupation or settlement; or if the lands have not been surveyed, two years from the receipt of the approved plat of such lands at the District Land Office, within which to complete the proofs of his said claim, and to enter and pay for the land so claimed, at minimum price of such lands; and where such settlements have already been made in good faith, the claimant shall be entitled to the said period of two years from and after the date of this act; Provided, that no claim of preemption shall be allowed for more than 160 acres or one quarter section of land, nor shall any such claim be admitted under the provisions of this act, unless there shall have been at least three months of actual and continuous residence upon and cultivation of the land so claimed from the date of settlement, and proof thereof made according to law; Provided further, That any claimant under the preemption laws may take less than 160 acres by legal subdivisions; Provided further, that all persons who are preemptors, on the date of this act, shall upon the payment to the proper authority of 62 cents per acre, if paid within two years from the passage of this act, be entitled to a patent from the government, as now provided by the existing preemption laws.

Sec. 8. And be it further enacted that the fifth section of the act entitled "An act in addition to an act to more effectually provide for the punishment of certain crimes against the United States, and for other purposes" approved on the third of March, 1857, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

Sec. 9. And be it further enacted that nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefit of the first section of this act from paying the minimum price, or the price to which the same may have been graduated, for the quantity of land so entered at any time after an actual settlement of six months, and before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases provided by law.

Sec. 10. And be it further enacted that all lands lying within the limits of a State, which have been subject to sale at

private entry, and which remain unsold after the lapse of thirty years, shall be, and the same are hereby, ceded to the State in which the same may be situated. Provided, These cessions shall in no way invalidate any inceptive preemption right or location, or any entry under this act, nor any sale or sales which may be made by the United States before the lands hereby ceded shall be certified to the states, as they are hereby required to be, under such regulations as may be prescribed by the Secretary of the Interior. And provided, That no cessions shall take effect until after the States by legislative act, shall have assented to the same.

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((AN ACT TO SECURE HOMESTEADS TO ACTUAL SETTLERS
ON THE PUBLIC DOMAIN. (MAY 20, 1862.))

((Be it enacted by the Senate and House of Representatives of The United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention, to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government, or given aid and comfort to its enemies, shall, from and after the first of January, eighteen hundred and sixty-three, be entitled to enter one quarter section or less quantity of public land, upon which said person may have filed a preemption claim, or which may at the time the application be made, be subject to preemption at one dollar and twenty-five cents, or less per acre, or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands and after the same shall have been surveyed; Provided that any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her land, which shall not, with the land so already owned and occupied, exceed to the aggregate one hundred and sixty acres.

Sec. 2. And be it further provided, That the person applying for the benefit of this act, shall upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States, or given aid and comfort to its enemies, and that such application is made for his or her exclusive use, and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified; Provided however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if at the expiration of such time, or any time within two years thereafter, the person making such entry, or, if he be dead, his widow; or, in case of her death, his heirs or devisee; or in the case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for a period of five years,))

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(Immediately following the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent as in other cases provided for by law; And provided, further, That in the case of the death of both father and mother, leaving an infant child, or children, under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state where such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and the sum of money herein specified.

Sec. 3. And be it further enacted, That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Sec. 4. And be it further enacted, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

Sec. 5. And be it further enacted, That if at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit, shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the Government.

Sec. 6. And be it further enacted, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued;)

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(but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: Provided, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing preemption rights; And provided further, That all persons who may have filed their applications for a preemption right prior to the passage of this act, shall be entitled to all the privileges of this act; Provided further, That no person, who has served or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

Sec. 7. And be it further enacted, That the fifth section of an act entitled "An act in addition to an act more effectually to punish certain crimes against the United States, or for other purposes," approved the third of March in the year eighteen hundred fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act.

Sec. 8. And be it further enacted, That nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price, or any price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting preemption rights.)

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